Austen K. de Blois,
57 South Liberty St.,
Elgin,
Illinois.

GESTA CHRISTI.

GESTA CHRISTI:

OR

A HISTORY OF HUMANE PROGRESS UNDER CHRISTIANITY

BY

CHARLES LORING BRACE,

AUTHOR OF

"Races of the Old World," "Home Life in Germany and Hungary
"Norse Folk," "Dangerous Classes of New York," etc.

FIFTH EDITION,

WITH NEW PREFACE AND SUPPLEMENTARY CHAPTER.

NEW YORK:
A. C. ARMSTRONG & SON,
51 EAST 10th STREET, NEAR BROADWAY,
1897.

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PREFACE

TO THE FOURTH EDITION.

THE reception of this book by the critics and the public both of England and the United States has been cordial beyond what could have been reasonably expected.

The adverse criticisms have been carefully and candidly considered by the author. The censures have come from two opposite sources: from those who believe little or nothing in Christianity as a supernatural power, and from those who believe too much.

From the first has arisen the criticism that the work has left out of view several great moral forces entering into the progress of the race—such as Judaism, "Classicism," or Greek philosophy and Roman law, Buddhism, and the tendency to improvement which comes from the advancing intellect of the leading nations.

These objectors insist also that Christianity and the Church should never be separated; that the latter is the only embodiment and historical representative of the other; that the sins and defects of the organized body must fall upon its Faith and its head; and that Christianity as a system must stand or fall according to the history of the Church.

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On the other hand, those who have been led by their emotions and their imaginations to consider the history of the Church as a kind of "Divine epic," have charged that full justice was not done in this work to the moral power and influence of the organized ecclesiastical body in every age. They have seen what blessings, in its purest epochs, it has scattered among mankind; and they have inferred—against historical facts—what a power of unmingled good it must have been in all periods.

In regard to the first criticisms mentioned, coming from agnostic sources, the author, with all candor and humility, cannot admit their justice. He has assumed (perhaps too frequently) that the best of "Judaism"—its humanity as shown in legislation for the stranger, its spirit of charity to the poor, its high morality, and its deep sense of the divine—was contained in Christianity; that the latter was a reformed Judaism. Many references have been made in this volume to its influence upon barbaric legislation, through the Mosaic law. A portion of a chapter has been devoted to the infamous and unchristian persecution of the Jews in various centuries. More could not have been said of Judaism, or such of its features as were inconsistent with modern progress would have required explaining and defending—such evils as legal slavery, polygamy, divorce of the wife by the husband, blood-revenge and various archaic laws and customs. This would have led the investigation away from its object—namely, to show the effects of Christianity on the moral progress of the world.

In regard to "Classicism," surely the obligations of the world to Stoic philosophy and Roman law are reiterated in numerous pages. The author would feel

himself basely ungrateful to a school of morals which to him has only been next to the Christian faith, in its support and invigoration amid the struggles of life, if he ever neglected to acknowledge the courage, heroism, elevation, and self-control brought home to him by such moralists as Socrates, Epictetus, Marcus Antoninus and others. And who that compares the Middle Age bigotry and superstition with the pure reason and justice of the Roman law, can ever cease to be grateful for its wonderful influence upon modern progress. Certainly this volume cannot justly be charged with neglect of the world's obligation to this grand system of human thought.

The criticism in regard to Buddhism seems hardly worthy of reply. The author holds the Buddhist faith in its origin as second only to the Christian religion in pure humanity and elevated spirituality; he has even avowed his belief in the inspiration of Cakya Muni, its wonderful founder.

With reference to the present moral condition of the world being due to its intellectual progress rather than to the influence of its leading Faith, of course much can be said on both sides. This book is a carefully-framed argument to show what have been the great causes working towards human advancement. We have attempted to give due recognition to all the forces tending towards the present moral stage of progress of the world. It may be that in so large a field we have not sufficiently considered each one of these influences. But we have attempted to produce facts and evidence which should make it probable, that by far the greatest factor in the moral and humane progress of mankind, is the influence of the person and teachings of JESUS

CHRIST. The argument is logical; and whoever overthrows it, cannot do so by vague declamation, but only by presenting a sufficient cause, other than Christianity, which shall account for these facts and changes.

Whether Christianity should always and everywhere be held as identical with the historical Church, is a fair question, and will often be answered according to previous prejudices. Christianity we have defined as the system of religious faith and morals to be derived from the words, teachings, and character of Christ, especially as conveyed to us in the Gospels. Now the organization which teaches this system and represents it to the world, may at times, from various causes, be altogether inconsistent with its Founder,—His spirit, and His doctrines. Surely then the Christian system and the Church would be two different things. We know what the Master taught; we know what His followers at certain epochs practiced. We say then that the latter did not represent their Teacher; that the doctrines and words and lives of the leaders of the historical Church at certain times are not Christianity, but are frequently directly opposed to it. This surely is a reasonable position. And yet we would never deny that there were in every age, godly men and women, practicing the truths and making manifest the spirit of their Master. These formed the Church invisible, the unseen line of believers transmitting the spirit and words and doctrines of the great Teacher.

Christianity is to be tested by the life and words and belief of its professors. Are they consistent with those of the Founder? If not, they are not what He taught and introduced into the world. Whatever be

the profession or name, this is not the Christian system or its fruits.

That the historical Church has, with all its faults and sins, been an aid to civilization, a patron of learning and the arts, a civilizer of wild and barbarous tribes; and a restraint on cruel and tyrannical rulers, no candid student of history can deny. Even the semblance of the gentle Teacher of Judea could not but be a blessing to mankind.

To the present edition a chapter has been added on the relations of Christianity to Art in the Middle Ages. The æsthetic conceptions, the immortal works in painting and architecture that have arisen from religious enthusiasm and the sense of beauty during the fifteenth and sixteenth centuries, are but as a side effect of this Faith. They seem hardly worthy of being classed with the record of noble achievements which this volume contains. Still, to some minds, it will be consistent that He who felt so exquisitely the loveliness of the Palestine lilies and the wild flowers on the shores of the Galilean lake, should have inspired such souls as the gentle monk of Fiesole and the pure artist of Umbria, with ideals of beauty and devotion that must last while Art endures; and that He whose communion with the Divine was especially in the temple not made with hands, should yet have not disdained to call forth in His followers a conception of a house of worship, than which the human imagination has not conceived or created one more worthy of the adoration of the Infinite Spirit.

It is a subject of deep thankfulness to the author that some have found in the argument of this volume, an aid to faith in things unseen and eternal. He him-

self believes that the personality of Christ is to be more and more an element in human progress, and that the advance of humanity and of civilization in the moral field, is but a continual approach towards HIM.

CHARLES LORING BRACE.

CHESKNOLL,
DOBBS FERRY, N. Y.,
September, 1884.

PREFACE.

THE writer of this work has been engaged for some thirty years in a practical application of the principles of Christianity, with the view of curing certain great social evils in the City of New York. He has been able to test its power on a large scale, in diminishing poverty, crime and misery. He has also had a humble share in, and been a witness of, the great effort of the United States to remove its tremendous evil—Slavery; and he knows how far Christian ideas were at the foundation of this great reform, and how much they stimulated and supported the long struggle.

For many years studies in the laws and history of the Roman Period and the Middle Ages have shown him the traces (often almost obliterated) of the silent, profound working of the great reforming Power of the world. He has also been engaged in examining and presenting in public writings, the influence of the Christian Faith in the more modern period, on International Law, Arbitration, and the relations of nations.

It has seemed to him that to write a condensed history of the progress of the humane ideas, practices, and rules of action taught or encouraged by this Religion, would be

a useful thing—especially as making them a more distinct possession and code of the civilized world, and as forming an indirect argument (not less powerful for being indirect) for the truth of this Faith. Yet in considering this subject, one must not confound Christianity and the Church. Whoever believes he can construct a kind of "Divine epic" from the history of the organized Church, either voluntarily deceives himself, or follows the will o' wisp light of a false sentiment.

There are certain practices, principles and ideals—now the richest inheritance of the race—that have been either implanted or stimulated or supported by Christianity.

They are such as these: regard for the personality of the weakest and poorest; respect for woman; the absolute duty of each member of the fortunate classes to raise up the unfortunate; humanity to the child, the prisoner, the stranger, the needy, and even the brute; unceasing opposition to all forms of cruelty, oppression and slavery; the duty of personal purity and the sacredness of marriage; the necessity of temperance; the obligation of a more equitable division of the profits of labour, and of greater co-operation between employers and employed; the right of every human being to have the utmost opportunity of developing his faculties, and of all persons to enjoy equal political and social privileges; the principle that the injury of one nation is the injury of all, and the expediency and duty of unrestricted trade and intercourse between all countries; and, finally and principally, a profound opposition to war, a determination to limit its evils when existing, and to prevent its arising by means of international Arbitration.

Ideals, principles and practices such as these are among the best achievements of Christianity.

It has seemed to the writer not impossible, that great numbers of the vast English-speaking race in Great Britain, America, and Australia, and from the cultured peoples of the Continent, might more and more unite in a kind of moral Confederation throughout the world to support and advance and spread these great and humane ideas. To have given even the faintest impulse towards this consummation and this progress, would be alone not to have lived in vain.

CHARLES LORING BRACE.

CHESKNOLL,
DOBBS FERRY, N. Y.,
Nov. 9th, 1882.

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CHAPTER I.

INTRODUCTION.—PLAN OF THE WORK.

AT a certain era in the world's history—not very remote as compared with the duration of the human race on the earth—there appeared a new moral force in human history. It originated in an obscure tribe of a remote province of the Roman Empire, and was embodied in the personality, life and teachings of a remarkable Being—called JESUS the CHRIST.

The moral truths in these teachings were not absolutely new—as indeed the principles of morality rest on the principles of human nature, and must be known, more or less clearly, to all men—but they were presented with such unequalled simplicity and earnestness, and illustrated by a life and character of such unexampled elevation and purity, and accompanied with spiritual truths so profound and universal, as well as with supernatural claims, that the whole formed a new power in the world for the moral renovation of man—in other words, a RELIGION; but one claiming to be absolute and universal, for all ages and races and circumstances.

The object of this work is to examine the effects of this faith or moral power on the advancement of the race in humanity and morality; both what it has accomplished, and what it tends to accomplish. In other words, we shall seek to show what Christianity has already done for the world, and, considering its nature and objects, and its effects in a comparatively brief period, we shall infer

what will be its influence in a far longer period. The investigation is difficult for various and often opposing reasons. Many influences, material, moral and intellectual, have combined to effect the advance of the race in morality and humanity. The problem is to estimate the peculiar influence of this new moral power. Then the civilized world has become so imbued with the ideas and feelings implanted or strengthened by this faith, that those who have apparently opposed and attacked it, have not unfrequently been those most animated by its principles. While, on the other hand—so dangerous is the effect of power and ambition even in the religious field—the organization which might be supposed to most expressly represent its truths has often been the most opposed to it in life and action. In the course of history, the sceptics, in matters of mercy and justice, have often been nearer Christ than professed believers; and the Christian Church has favoured practices and encouraged institutions, which have been a travesty on the teachings of Christ, and an offence to every feeling of humanity. The student who searches for the pure and benevolent impress of the great Teacher on the wild annals of human history, must divest himself of much reverence for the so-called "Church of Christ" on earth. The Church that is seen and known of men, represents often anything but His image. At times it is filled with bigotry and hate; it implants persecution in Roman law; it encourages frightful religious wars; it opposes liberty of thought, and the investigation of science; its skirts are stained with the blood of the Inquisition, and wet with the tears of millions of victims of the slave-trade; it encourages war, and is often only an emblem of power and lust and ambition. Still in every age were simple men and women, not known perhaps to history, or even to those of their own time, whose souls and lives were filled

with the principles of this new faith. These gradually affected social habits and practices; sometimes changing them before they influenced legislation, sometimes, by a favouring public accident, being able first to reform laws and public officials; thus, day by day, by imperceptible steps purifying Church, State and people; gradually causing certain great abuses and wrongs to melt away before the fervency of their spirit, and the innocence and beneficence of their lives. These have been inspired by CHRIST. Though for the most part unknown perhaps to ecclesiastical records, or the historians of empires, they have illustrated and transmitted the divine truths which they received from Him. In lives of purity and human brotherhood, in honesty, faithfulness, compassion and true humanity, they have sought to follow their great Leader. They have formed the true and invisible "Church of Christ." While living for Him, they have lived for the human race. Their spirit and their sacrifices have made it possible that ages hence some of the great evils of mankind should come to an end, that some tears should be forever wiped away, and a fair prospect be held forth of a distant future of humanity, justice and righteousness. The victories they have won in their silent struggles, and bequeathed to us, were really the "*Gesta Christi*"—the achievements of Christ.

The first portion of these investigations relates to the Roman period of history, when the great empire, having its centre on the banks of the Tiber, controlled the civilized world. The object here is to trace the influence of the new faith on the Roman law, and on the morals, habits and practices of the Roman people and provinces. Some of these researches must of necessity be somewhat technical, as bearing on slight changes in laws relating to personal rights and the succession of property. They are

important, however, as affecting the greater changes and reforms which have since arisen, and are now in process of development. Others relate to the lessening and doing away of abuses, so deep-seated and long-continued, that it would seem that nothing but the power of a Religion could remove them. But in this field must ever be kept in view the power of a system of philosophy and morals, the most elevated and noble which the Greek and Roman antiquity has known—the Stoical. The task of the investigator is to trace out the peculiar working of the new Faith, as distinguished from this older school of morals.

II. The second division relates to a more interesting and picturesque period of history—the Middle Ages. Here the difficulty lies in condensing and clearing the great mass of material offered, and here, too, we stand on fields fought over in incessant discussion. The exact position of woman in the German tribes, the precise character of her *Mund*, or "Tutelage," what marriage was with the ancient Teutons, and what feminine rights were in those wild tribes, are subjects still endlessly argued upon. Here, too, in all the reforms of the Middle Ages, whether as to woman, or humane legislation, or checking war, or abolishing cruel practices, or doing away with serfdom and slavery, the problem is to trace the precise influence of Christianity, as distinguished from many other moral and material forces. The only course in this investigation seems to be to examine, so far as possible, original sources of evidence—codes of law, forms of will, the canons of the Church, decrees of councils, the words of ancient historians or of contemporary scholars, and the most trustworthy and candid historians, and attempt to draw the most probable conclusion, without fear or prejudice.

It cannot be hoped that absolute certainty will be attained. The question of the precise work accomplished in

the past by the great Teacher of Nazareth, will long be a question of historical probabilities. We can only offer to the discussion, patient investigation, and the love of Truth for its own sake.

III. In the Modern Period, we enter on firmer ground. We are nearer the actors, or we have taken part in the events. In such matters as the abolition of the slave-trade and of slavery, in the repression of the duel, in the improvements of International Law, and the various modern charities and reforms, as well as the change in woman's position, we know what part the Faith taught by Jesus has had, and what power it exerted, and what it continues to exert. Here the weak point which strikes the candid investigator, is not that Christianity has done what it has in modern times, but that it has not done a great deal more. This, too, must be considered in the argument.

And, though not demanded by the investigation, a brief comparison of humane progress under this Religion, and under the highest beliefs among modern non-Christian peoples, will strengthen the conclusion.

We offer the investigation to all lovers of truth. No friend of humanity will hesitate to rejoice, should it indirectly serve to strengthen the ancient Hope and Faith of the leading races of mankind.

I.

INFLUENCE OF CHRISTIANITY ON THE LAWS, PRACTICES AND INSTITUTIONS OF THE ROMAN PERIOD.

CHAPTER II.

PATERNAL POWER.

WHAT may be called the "natural progress" of mankind under the influence of the Divine Spirit and the instincts implanted in the human mind, is towards respect for the individual and towards self-control, in the preference of the higher and distant good to the lower and present. Our plan in the beginning of this investigation is to make plain the stimulus given to this progress in the Roman Empire, by the new system of ideas and the new forces thrown into the world through the Christian Religion. The improvements thus caused or hastened have been at the basis of all modern civilization and progress, and, though often apparently slight, are such as will influence all future history.

One remarkable archaic institution survived and was transmitted through successive ages of Roman history before and after Christianity—the primitive paternal authority. It was thought by Roman legal writers, even as late as the time of the Pandects,[1] to be peculiar to the Romans. But modern investigation shows that it belongs to nearly all races in a certain stage of development, and that the Germanic tribes who overwhelmed the Romans, had, many of them, carried it to an extreme degree. In the father's house, the Roman father had absolute authority over the son; he could chastise, put in chains, exile or

[1] Jus potestatis quod in liberos habemus, proprium est civium Romanorum. (*Instit.*, lib. I., tit. ix. *Pand.*, I., tit. vi. vii.)

sell him as a slave; he had power of life and death over him. The son's property became the father's; he could assign a wife to him, divorce him when married, or transfer him to another family by "adoption." The son only escaped and was "emancipated"[1] by a sale of his person, three times repeated, by his father. This custom, originally designed to control parental greed, became used as a fictitious legal form for freeing the son. The son in a legal view seemed worse off than the slave: the latter, if formally emancipated, was finally free; the former reverted to his previous condition under his father, and in early ages required this triple form for entire freedom.

The power of life and death was not a legal fiction. Three different Romans of position, Cassius, Scaurus, and Fulvius are mentioned by Valerius Maximus[2] as having been executed by their father; and another son was banished by his father, Titus Avius. Seneca[3] relates that the populace pursued with daggers, on the public square, a knight (Erixon) who had scourged his son to death; an act legal, but held to be too severe. The right of a father to kill a daughter taken in adultery was universally conceded. Cicero appears to admit a right of life and death even in case of an adopted son.[4] He alludes to it as a recognised right in regard to a real son.[5]

Manlius is said to have put his own son, though

[1] A son thrice sold by his father, was free from his power; after this form he became *emancipatus*, or sold out of his family. In a similar manner, another son could be bought in from another family, or adopted. See *Ulpian*, tit. x. "Qui in potestate, etc."

[2] *Val. Max.*, v. 8.

[3] *De Clem.*, 12, 14. Populus in foro graphiis confodit.

[4] . . . Vitæ necisque potestatem habere ut in filio, erat. (*Pro Domo*, 29.)

[5] Patrem tuum civem optimum, clarissimi viri filium: qui, si viverat, quâ severitate fuit, profecto non viveris. (*Pro Domo*, c. 32.)

victorious, to death for disobeying[1] orders; and Cassius Brutus killed a son who had negotiated with the enemy.[2]

A Latin historian[3] says, "One has seen fathers authorised by law, drag their children from the tribune while they were addressing the people, in order to punish them at their discretion. They were dragged across the public square and no one dared defend them. The consul, the tribune of the people, in fine the people itself, so proud of its power and force, who came to applaud them were obliged to keep silent, and respect in the fathers, an authority which the law gave them."

At the close of the republic, the *Lex Pompeia de Parric.*, or the law in regard to the murder of relatives by relatives, is silent with respect to the murder of a child by the father.

It is related that the Emperor Augustus was present as witness and judge in a family-council which a father had assembled to decide on the fate of a son, guilty of purposes of parricide. The Emperor Trajan is said to have "emancipated" a son, because the father violated the duties of paternal affection. And an ancient authority approves the sentence which had deprived the father of the succession of a deceased son, thus emancipated.[4] Even the Stoical jurist, Paul, seems to recognise the right of a father to sell his son in case of great need and poverty.[5]

The paternal power existed also over the person of the daughter.

This deeply-rooted institution was grafted throughout the world wherever Roman citizenship extended, though often modified and humanized. The spirit of humanity,

[1] *Liv.*, vii. 7.

[2] *Plut.* (P Gr. et Rom.).

[3] *Den. H.* (*Ant. Rom.*, 2, 26).

[4] *Dig. Pap.*

[5] Qui contemplatione extremæ necessitatis aut alimentorum gratiâ, filios suos vendiderint, etc. (*Sent.*, v. 1, 1.)

especially under Stoical influences, worked upon it through all periods of the Republic and the Empire. No student of history can ever cease to be grateful for the profound moral power which went forth from the Stoical school in antiquity.

But under the Christian emperors, whatever may have been their individual characters, a great and marked change shows itself in this custom and the legislation upon it. A new idea had entered all classes as to the rights and personality of each individual, whether child or parent. When the son was recognised as the child of God and "joint heir with Christ," equal with his father in the kingdom of the Lord, for whom Christ had died, paternal tyranny could not long continue. The change did not at once show itself in legislation; society is usually reformed before laws: but that elevation of each person began which, after many ages, must result in absolute emancipation and equality of rights.

The learned commentator on the Theodosian Code saw at once the source of the reforms which appear in that legislation. "It is Christian discipline," says Godefroy, in regard to the Roman law, "which gradually softens the severity of paternal authority."[1]

The spirit of humanity as expressed in the thoughts and legislation of the Stoical jurists, laboured steadily to mitigate this authority through many centuries. The words of the jurist Marcian were quoted even by those who had absolute power over the lives of the children:

"Paternal power ought to rest in affection, not in atrocity."[2]

[1] Christianâ disciplinâ paulatim patriæ potestatis duritiem emolliente. (De Maternis bonis. *Inst.*, 248.)

[2] Nam patria potestas in pietate debet, non in atrocitate, consistere. (*Marc. Inst.*, lib. xiv.; *Pand.*, xlviii. 9, 5.)

Adrian used these words on a remarkable occasion when the punishment of a son was softened.

Constantine (333 A.D.) was as far removed from the spirit of Christianity as possible in his character, but his legislation, framed by men feeling the new power in the world, shows the humane forces derived from this faith. He ventured to punish as a parricide, a father killing his son.[1] Under Justinian (528 A.D.) the Christian influences are more distinctly felt, and the father could only inflict moderate penalties, and summon his children before the courts, where he could suggest such sentence as might be appropriate to domestic discipline. He could also disinherit. The mitigations in regard to the son's property were of gradual growth. At first, all his earnings and possessions belonged to the father. The humane spirit step by step protected him, and obtained for him more individual rights. Certain portions of his property, acquired in specific modes, were secured to him. But it was only under Constantine and the early Christian emperors that the son's rights of property were extended to acquisitions made in a great variety of public and religious offices. He was not yet on a plane of legal equality with his father, but his position approached the modern position under the laws of Christian nations.

Under the former ideas of the paternal tyranny, the father claimed as a right all the property of the deceased ancestors of the family, or of the mother, if they died intestate, and of his own children deceased. The laws of the Christian emperors gradually converted these rights of the Roman father into what are almost the rights of the modern father. He becomes only one of the heirs of property thus left; and his interests are made inferior to those of the minor children. The peculiar distinction of

[1] *Cod. Theod.*, De Parricid.; et *Just.*, De his qui parentes, etc. (c. ix. 17, 1.)

the new power in the world was the protection it afforded to, and the interest it showed in, the child.

The property of children who came under the power of a father by marriage, was especially protected from his claims. The mother was shielded in her rights; and her property, if she died intestate, descended at length to her children. The modern conditions of inheritance appear even under Constantine. The son, however, could not yet sell, mortgage, or bequeath by will his own property. Under the new ideas, Justinian[1] gave to the son full control over all his acquisitions. In the new light spread through the world, it seemed to him "inhuman" to do otherwise. The father had only a life-interest in his son's acquisitions or property, unless they were derived from his own. In case of "emancipation," he was allowed a life-interest of one-half. The father could still disinherit.

These changes in Roman law relating to paternal power after Christianity became a power in the world, may seem to the modern reader of no great account. But the difference between the father's power under the old Roman law and that under Justinian, measures the difference between the old and the modern world. The tyrant of the family has merely become the judge, or indeed little more than the modern father. He cannot "expose," buy or sell, or imprison his son (except through the agency of the courts), or abuse or kill him; he cannot adopt him into another family without his consent, or give him by force in marriage, but is only permitted to declare a veto on a marriage which is not agreeable to him.

The drift of modern opinion and practice is towards the independence of the child, both social and legal. The

[1] *Just.*, lib. II. tit. ix. Per quas personas. De bonis quæ liberis, etc Quod nobis *inhumanum* visum est.

authority of the father is becoming more and more one of affection and of moral influence. Paternal tyranny, even in the most private matters of the family, is passing away. The beginning of this great change was in the reforms of Roman law under the teachings which came forth from Judea.

Succession.—To understand these reforms still further, we must consider a subject somewhat technical, but important as affecting modern society—the bearing of the paternal power upon relationship and the transmission of property.

The family was for ages in Rome (as in many other countries) an *imperium in imperio*, and it could only be maintained thus by limiting relationship to descendants by males, or to "*agnates*." If a married daughter were considered a member of the family, with equal rights to property and protection, it is manifest that great confusion would arise and conflicting interests be introduced in the family. From this principle arose much injustice to the woman. The relatives by males were the persons said to be especially "in power" (*in manu*), or in the family, of the father, though he was permitted to introduce others into the family by adoption. Without enlarging upon this important topic, we would only say that under the old Roman law the succession of property followed the bond of "power," and was determined by family, not blood. One could be a near relative of a deceased person, even a child, without being an heir. The son "emancipated" by the father was no longer in the family, and was not an heir. The heirs were especially the children or grandchildren who were in the family; they might even be adopted, but they are still first heirs. Daughters "in the family" succeed like males; there is under this archaic system no primogeniture or inferiority of sex. The wife not married

out of the family is like a daughter and heir; the wife of a son (himself in "the family") is also an heir and in power. These are called "heirs of themselves"[1] or "necessary heirs," continuing the person of the father. When there are no necessary heirs, then comes in the nearest agnate or relative by males, who would be "in power" if his ancestor were living. "Emancipation" or separation from the family breaks this relation, so that the direct descendants of an emancipated son do not succeed any more than do the descendants by married females.

Reforms in this as in other directions of the paternal power began under Stoical influences; but under the Christian emperors there was, as might be expected, a more decided drift towards the natural bonds of succession. The influence of the new Faith was everywhere to protect woman, and to give her equal rights, whether in the family or out of it. Valentinian the Younger had enacted that the children of the daughter (who had been legally outside of the family) should succeed to the maternal[2] grandfather with the "necessary heirs," and that they should receive two-thirds of what would have fallen to their mother. Constantine, whose legislation is touched by the new spirit, goes still further. He provides in certain cases that she should take from the agnates, their children and grandchildren, one-third of their succession, excluding all other agnates. With Justinian (528 A.D.) came more of the force of the new religion upon the law of the Roman Empire. The reforms of his code struck deeper. The great codifiers who prepared his body of laws, seemed to

[1] Sui hæredes (*Inst.*, lib. II. t. xix). *Nov.*, 164. *Gaius*, lib. II. t. x. De intest. hæred. (De Agnatis). One of the reforms in succession Justinian alludes to as "actionem Deo placentem," as if feeling the religious motive.

[2] *Inst.*, lib. III. tit. i.

feel, and even in their dry labour to be elevated, by the fresh "enthusiasm of humanity" working in the world. They often speak of such and such a measure as "inhuman."[1] Justinian's code enacted that the children of the daughter should represent their mother entirely, as if she were in the family. It does away with all distinctions of being "in the family" or outside of it, or those derived from the number of children (*jus liberorum*) of a woman, and established that those who had one as well as those with four children, whether "in power" or emancipated, were called equally to the succession of their deceased children. It preferred the mother to all the agnates or relatives by the males; all were excluded by her; the only competitors being the brothers and sisters of the deceased. The natural relatives, or cognates, were made equal to the relatives by the males or agnates. The new code abolished all distinctions between agnates and cognates. The bond of "power" disappeared before the bond of blood. Paternal authority lost its pre-eminence. Property reverted to the natural descendants of the deceased, whether "in power" or of their own right, whether "emancipated" or not, without distinction of sex or degree, to the exclusion of all other relatives. The masculine and feminine lines are equal. The drift of these reforms is towards equality of rights between women and men, or between different members of the same family, so far as succession is concerned. The children of the daughter separated from her family by marriage, or of the mother who from some form of marriage had never been considered as belonging to the family, and the mother and sister who had been excluded by "emancipation" were placed

[1] Quod nobis *inhumanum* visum est, et liberis pepercimus, et patribus debitum reservavimus. (*Inst.*, lib. II. tit. ix.)

before the relatives by males of a distant degree. Even the male and female children by a mother from a former marriage ("uterine" children) were placed on an equality with the other heirs.[1] All these with the female descendants of male heirs and sisters shared equally in the inheritance.

These reforms in the Roman law may seem to the modern student of little importance. But they are an indication of the tendency everywhere of the Christian Faith to introduce equality of rights among persons, to elevate the individual, to control arbitrary power, to substitute self-command, consideration and the influence of the affections for tyranny and unchecked power in the family. They were apparently but small advances; they had, it is true, been begun by Stoicism; but they received their greatest stimulus from Christianity, and properly heralded the greater and more profound changes which the new Faith was to introduce into modern society.

NOTE ON CHAPTER II.

De Consang. et uterin. frat. (Col. VI. t. xii. *Nov.* xxxiv.)

De Desc. succ. (*Nov.* cxviii.) cap. 20. De Asc. succ. De succ. ex. etc., cap. iii. De Agn., etc., cap. 18. Sed in omnibus successionibus agnatorum, cognatorumque differentiam vocare præcipimus, etc. (*Nov.* 118.)

De legit. tut. cap. iv.

Et quoniam mater excludebatur quidem a filio masculo . . . nos non quærentes filiorum jus, sed exinde ei legitima jura dant, etc. (Col. IV. t. i. *Nov.* 22.)

Nulla introducenda differentia, sive masculi, sive fœminæ sint et seu ex masculorum seu feminarum prole descendant, sive suæ potestatis sint constituti. (Col. IV. t. i. *Nov.* 108.)

Just., lib. III. tit. ii.

[1] Troplong. *L'influence du Christianisme sur le Droit Romain. Inst. Justin.*, Sandar's note, lib. III. tit. iv.

CHAPTER III.

THE POSITION OF WOMAN UNDER ROMAN LAW.

IT was a necessary part of the archaic institution of the family, that woman should be under the perpetual tutelage of her relatives by males; the object being to keep her property in the family and to separate her from public affairs. Under the old Roman law, such of her property as was *mancipii*,[1]—land, slaves and beasts of burden,—could not be disposed of without consent of her tutor. But she could not intervene in the government of the family, nor in industrial or commercial affairs, nor in public matters. A court of her relatives could inflict upon her the severest penalties in case of certain offences. In the time of Nero, a distinguished Roman lady, Pomponia Græcina, wife of Aulus Plautius, first conqueror of Britain, was accused of a "foreign superstition." She was submitted to the judgment of her husband. Aulus assembled the relatives, and, after an examination, he declared her innocent. There is much probability that this lady, one of the last instances of the extreme exercise of the marital power, was one of the first secret converts to Christianity.[2] As a mother, the

[1] Perhaps, in its origin, such property as was "taken by hand," but later, such objects as were transferred by the ceremony of "mancipation." (*Ulpian.* tit. xix. 1.)

Majores nostri, nullam, ne privatam quidem rem agere feminas sine auctore voluerunt; in manu esse parentum, fratrum virorum. (Cato's Speech. *Livy*, 34, 2.)

[2] *Tac. Ann.*, xiii. 32. *Agric.*, 4.

Roman woman had originally no legal inheritance in the property of her minor children. A child desiring to marry need not obtain her consent; the children were not in the family of the mother but of the father; the mother had no power over them. As a wife, the husband had, under old Roman law, power of life and death over her, and absolute control of her property. When she passed *in manum*—into the power—of her husband, she became not his equal, but his adopted daughter or ward. The law considered her as a sister of her own children; all her property became that of her husband; all her earnings were his. Like children and slaves, she was not, while *in manu*, a person in her own right. She lost all her family rights, and her agnates were deprived of their rights of tutelage or of succession to whatever of her property would revert to them.

The great object of these legal arrangements was undoubtedly to preserve the woman's property in certain families. Yet there was underlying them a deep contempt for woman, utterly foreign to the new Faith, but familiar to the Stoical school. Thus Gaius gives as the ground for the tutelage of woman, her "levity of mind";[1] and Cicero in like manner, explains it as due to her "infirmity of purpose."[2]

The three ancient forms of Roman marriage, the *confarreation*,[3] or religious ceremony; the co-emption,[4] or civil contract; and the *usus*, or intercourse, all gave the husband most of these rights over the wife. But side by side with

[1] Veteres enim voluerunt feminas etiam si perfectæ ætatis sint propter animi levitatem in tutela esse. (*Gaius*, Comm. 1, 144.)

[2] Mulieres omnes, propter infirmitatem consilii, majores in tutorum potestate esse voluerunt. (*Cic. pro Muren.*)

[3] The eating of a cake of *far*, or rice, together.

[4] The form of purchase.

the ancient marriage, sprang up another form, of "Free marriage,"—a re-action from the former and in the interest of the woman, as that had been entirely in favour of the man. It was recognised by law, and produced legitimate children, though not always held as a respectable connection. Under it the children were submitted to the "paternal power," and the woman lived with her husband, but she possessed her own property, worshipped her own gods, and was still connected with her own family. There was, under this form, entire separation of property between husband and wife, and they could even bring a civil action against one another in the courts. Such a wife was called *uxor* and *matrona*, while under the old marriage she enjoyed the proud title of *mater-familias*. The old form of *usus* became changed into this form whenever a wife absented herself for at least three nights.

Thus, in Rome, there were two extremes in the history of marriage; the excessive power of the husband under the ancient form, and too great laxity under the new. This is to be borne in mind in considering the peculiar influence of Christian teachings upon the Roman law. By the second century after Christ, *usus* and *usucapio* had disappeared as a rite by which the husband acquired his wife as a thing. "*Confarreation*" (the religious marriage) was only practised by families who discharged certain pontifical offices, and where this marriage was required as a condition of the children entering on these duties. "*Co-emption*" became the principal form for acquiring the absolute marital power. But "Free marriage" grew to be more and more the custom. Its effects on the rights of property in the woman were very marked. Under the old marriage, the woman *in manu* had nothing, could earn nothing, and own nothing. If the husband died, she divided the inheritance as one heir among the children;

if there were no children, she was sole heir like a daughter. If she died first, the husband took everything, even the property which she had brought to the marriage. In Free marriage arose the *dos* for a daughter; that is, the father and daughter were bound to aid in the expenses of the future family. The Julian Law made it obligatory on fathers and the paternal ancestors to dower their daughters. The *dos* was acquired by the husband, and united with his fortune; he could alienate it, and even bring an action against his wife for objects in the *dos*, and, at her death, he was not obliged to restore it to her heirs.

With Christianity, naturally came in a new conception of the position of woman. Her relation to her husband was gradually changed, and, step by step, these disabilities or disadvantages disappeared. The husband was first obliged to restore the *dos* to his father-in-law, *solatii loco*, as a solace at her death. In case of her husband's death, she was permitted to demand from his heirs what she had brought in *dos*. And finally, *dotes* were guaranteed to the widow.

But the spirit of the new times was especially expressed in the Code of Justinian. "It is worthy of the chastity of our times,"[1] say the Institutes, "to give this new position to women; tutelage of women must be done away with."[2] The *dos* must always be restored at the dissolution of marriage; the husband was to have only a temporary limited interest in it; it was inalienable even by consent of the wife. She even had a legal mortgage over all the immovable property of her husband to guarantee its restitution.[3] The absolute power of the husband ceased under Justinian's laws.

[1] Dignum castitate nostorum temporum, etc. (*Inst.* lib. I. tit. xii.)
[2] Pupilli, pupillæque cum puberes esse cœperint, tutelâ liberarentur
[3] *Inst.*, lib. I. tit. xxii. Lib. II. tit. viii.

This great code, under the inspiration of the fervent humanity taught by the new Faith, made one great step in this important reform, which is at length to give woman entire equality of rights under the law.

The tendency towards "the personal and proprietary independence" of women in modern law and custom received its first great stimulus in the religion of Jesus affecting Roman law.

The mother acquires also under this code equal rights with the father over the succession of deceased children; she becomes their legal tutor, and presides over the choice of a husband for the daughter. If the husband unjustly repudiates her, she receives full paternal power.[1] This is the beginning of that advance in the legal position of the mother, which has culminated in modern legislation.[2]

Divorce.—The "Free marriage" naturally gave rise to the utmost freedom of divorce. Separation could be legally caused by either party, by a desire to divorce expressed in writing (*libelium repudii*). Women made use of this even more than men. At the close of the Republic the licence was frightful. Augustus attempted in vain to struggle with it by legal enactments. The Julian Law deprived women of their *dos* who provoked divorce, but without effect. Seneca speaks of "*quotidiana repudia*," daily divorces, and in another well-known passage, of the illustrious and noble-born women who reckon their years not by the number of the consuls, but by that of their husbands.[3] Juvenal's epigram is well-known, of the woman who had eight

[1] *C. Theod.*, v. 4, 5. *Nov.*, 117, c. 7.
[2] See chapter of this work on "Position of Woman under Modern Influence."
[3] . . . Non consulum numero sed maritorum, annos suos computant. (*De Ben.*, iii. 15.)

husbands in five years.[1] Martial says: "who marries so often, marries not all;[2] she is but an adulteress"; Tacitus speaks of "*magna adulteria*" of the time, and later, Tertullian[3] represents divorce as the very purpose and end of Roman marriage. Vice among Roman families had reached its lowest depths during the first centuries of the Christian era. The Roman senate in the year 19 A.D. was obliged to pass an act, that no woman whose grandfather or husband had been a Roman knight was permitted to make her person venal.[4] A lady, whose father had been of Prætorian rank, had appeared before the Ædiles to make a public profession of lewdness.

Even before this, the more strict Romans had felt keenly the degradation of woman. Porcius Cato, in the year 558 of the city, had reproached women from the tribune for their desires for liberty and even licence in everything,[5] and for so much neglecting the "right and dignity of the man" (*jus majestatemque viri*). Juvenal might well say that no crime or deed of lust was wanting to that age[6]:—"the age of iron,"[7] where the good were indeed few.[8] Even the calm philosophers, like Seneca, felt the deep depravity of the time. Woman he stigmatizes as a foolish, wild creature, unable to control her lusts.[9]

[1] Sic crescit numerus, sic fiunt octo mariti,
Quinque per autumnos. (*Sat.* vi.)

[2] Quæ nubit toties, non nubit; adultera lege est. (*Ep.* vi. 7).

[3] Repudium jam et votum est, quasi matrimonii fructus. (*Apol.* c. vi.)

[4] . . . ne quæstum corpore facerit, aut maritus eques Romanus fuisset. (*Tac. Ann.*, 2, 83).

[5] Omnium rerum libertatem, imo licentiam desiderant.

[6] Nullum crimen abest, facinus que libidinis, ex quo
Paupertas Romana perit. (*Sat.* vi. 223.)

[7] Nunc ætas agitur, pejoraque sæcula ferri. (xiii. 29.)

[8] Rari quippe boni. (xiii. 25.)

[9] Animal imprudens, ferum, cupiditatum impatiens. (*De Const. Sap.* 14).

Paulus Æmilius, when he discarded the beautiful Papyria, only deigned to say, "My shoes are new and well-made, but no one knows where they pinch me."[1]

Seneca speaks of Mæcenas as having "married a thousand times."[2] C. Sulp. Gallus is said to have repudiated his wife because he had seen her abroad with head uncovered.[3]

Modesty was held to be a presumption of ugliness.[4] A correspondent of Cicero in one of his letters casually mentions, as an item of news, a divorce without cause (*sine causa*) of one Paula Valeria, who announced to her husband on his return from a journey that she was separated from him and was about to marry Dec. Brutus.[5] Cicero himself repudiated his wife Terentia in order to escape his creditors, by giving up to them the *dos* of his new wife, Publilia, whom again he afterwards repudiated.

It is possible that we may exaggerate the depravity of these times, and judge too much from the epigrams of satirists and the condensed phrases of historians, still such legislation as we have quoted from Tacitus is a kind of evidence not easily to be overthrown.[6] It should not be forgotten, however, that intellectually the Roman woman must have received much training in the first two centuries, through the great number of secret associations existing. The burial inscriptions show that she bore an important part in these, and even held office in some of the munici-

[1] *Plut. Vit. P. Æm.*

[2] Qui uxorem millies ducit.

[3] *Val. Max.* (vi. 3, 10). *De Prov.*, c. 3.

[4] Argumentum est deformitatis pudicitia . . . Numquid jam ullus adulterii pudor est, postquam conventum est, ut nulla virum habeat, nisi ut adulterum irritet? (*De Ben.*, l. iii. c. 16.)

[5] Lib. 8, *ad Fam.*, ep. 7.

[6] *Ann.*, 2, 83.

palities. It does not appear that these societies elevated her morals or character.[1]

Of the effect of the new Faith on this debasement of morals we shall speak elsewhere. Our present concern is with its influence on legislation. Laws are often far behind the morals of a community; and the Christian principles would naturally enter very slowly into the legislation of an empire like the Roman. Constantine is the first nominally Christian emperor, but in life and character was much further from the Christian standards than some of the Pagan emperors. Yet his body of legislation first shows the new principles struggling with old habits and modes of life. By laws passed in 330–331 A.D., a wife may be divorced from her husband only under three conditions; when he is a murderer, a magician, and a violator of tombs. A wife who divorces herself without cause loses her *dos*, and is banished to an island. The husband may be divorced from his wife when she is adulterous or given to evil practices. The divorced husband can marry again and keep the *dos* of his first wife. But if the woman succeeds in proving her innocence, she has right again to all the property of her husband, and even to the *dos* of the second wife.

This legislation under Constantine sought in every way to strengthen the marriage tie. Civil equality was restored between the spouses. The duty of fidelity was presented to the husband by the law, as a sacred obligation to him as much as to the woman. A married man was prohibited (340 A.D.) from having a concubine, and finally adultery was punished as a capital crime (*facinus atrocissimum*).

[1] Boissier, in his excellent work, *La Religion Romaine*, has argued with great force for a better character of Roman Society than historians have given to it. (See De Rossi, *La Roma sott.*, tom. iii. 1877.)

Concubinage was opposed, and efforts were made to change it into a permanent marriage. This legislation went on under succeeding emperors. Honorius and Theodosius (421 A.D.) provided by law that any woman divorcing her husband, without legitimate cause, should lose her *dos* and all gifts of her husband, and be banished without hope of re-marriage. A husband guilty of this offence was punished in like manner. A woman repudiated wrongfully could re-marry in a year; and the husband abandoned by his wife, could re-marry at once. After a legal divorce, the wife could re-marry in five years. Theodosius and Valerian III. returned somewhat to liberty of divorce, but afterwards were compelled to limit it again.

It cannot be said that this struggle of Christianity to impress upon Roman law the sanctity of marriage, was pre-eminently successful. What was gained in one reign was lost in another. Justinian's Code even extended the causes of divorce. The marriage by "civil contract" could be dissolved by mutual consent; but if one party only consented, heavy penalties were inflicted on the other unless legal grounds for divorce existed. The woman who divorced herself from her husband without reason, lost her *dos* and was shut up in a monastery; her property was divided, one-third falling to the children, and two-thirds to the monastery. The husband for a similar offence was first fined, and finally imprisoned in a monastery, and deprived of his property.[1] The children were usually delivered to that one of the parents believed by the court to be most capable of taking care of them. A preference was expressed in the laws, that that parent should have the charge of them who had not been a cause of the divorce.

So changing and inconsistent were the different laws of

[1] *Nov.*, 117, c. 13.

Justinian on this important matter, that the commentators have been obliged to confess, that "some were the laws of the Cæsars and some of Christ." [1]

The successors of Justinian fell into the non-Christian practice, and restored the liberty of divorce by mutual consent.

Concubinage.—By the side of legal marriage, existed in Rome the connection of concubinage. Constantine's legislation shows the effect of the new ideas spreading in the world, in its struggle with this evil. His laws gave legitimacy to children born in concubinage, provided the parents were subsequently married; another law forbade any gift or bequest to natural children, and still another forbade official personages making public their condition of concubinage.

Under Justinian, natural children were legitimized in three modes: by incorporation in the *curia* (the class from which magistrates were elected), by subsequent marriage of the parents, and by special edict of the emperor.

As we have said, these effects of Christianity on Roman law in regard to marriage and divorce, and the violation of purity, are not striking, yet they show the beginning of the great reforms which this Faith is adapted to produce.

[1] Aliæ sunt leges Cæsarum, aliæ Christi. (*Jerom*, i 178. Selden, *Uxor. Eb* l. iii. c. 31.)

CHAPTER IV.

PERSONAL PURITY AND MARRIAGE.

IT need not be said that the Christian system of morals demanded the utmost purity of life, as well from the man as the woman. In regard to masculine purity, it is still in advance of the current opinion of the civilized world. So strongly is this elevation of morals characteristic of Christ's life, that we do not look for or expect direct teachings against vice. No direct denunciation is transmitted from Him against one of the most terrible organized evils of ancient or modern times—prostitution, or against the unnatural vices which were eating out the heart of Roman and Greek society. The impression, however, which an impartial reader would get from the narrative, is of a person so pure and elevated that such vices could not even be thought of when under His influence. His power goes back of organized vices, and touches the sources of character. His relations to abandoned women; the story of the adulterous woman, which, whether true or imagined, shows the popular conception of His character; and the few words reported from Him on these and related topics, together with the character of His early followers, all point to the unique elevation and nature of His influence on the great weakness and sin of mankind. He required absolute purity from man as from woman. He was not, however, alone in this. The Stoical moralists had done the like; yet but few of their followers had ever practised this high self-restraint, and no great example

stimulated them to it. Even the Stoical jurists[1] alluded to the principle; but there is little question that before Christianity entered the world, comparatively few persons felt this obligation of morals, and it may be said that now, a great multitude in all Christian countries have never yet reached the level of Christian doctrines in this respect. Had the Founder of Christianity simply taught purity as some of the early Fathers taught it—as meaning absolute asceticism and celibacy—the world would have been comparatively little benefited. The nature of man would have re-acted against it. We should have had even more celibate sects, greater reactions, a more unnatural condition of society, and a falling again into vices and habits as bad as those of the imperial era. Such a system of morality could not have met some of the first conditions of a divinely sanctioned system; it would have been only temporary and incomplete.

Marriage.—But it is evident that Christ set the highest value on marriage. The only human institution in regard to which He departed from His ordinary habit, was that of marriage. He lays down here a direct and positive rule. The words are so clear and definite, that a mistake of the historian or transcriber seems hardly possible. He evidently felt the bond as one which more than any other binds human society together. He foresaw the boundless evils which would arise to the world from a looseness of its ties; the breaking up of homes; the neglect and ruin of children; the low position which freedom of divorce would give to woman; the temptation to man to choose and to throw aside; the destruction and degradation of family life which must ensue where marriage is taken up and broken

[1] Periniquum enim mihi videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non exhibet. (*De conj. adult.*, l. ii c. 8. *Cod. Greg.*, XIV.)

at every whim He either foresaw these evils, now so familiar to moralists, or He felt the sacredness of the union so deeply, as to command that only one cause should break it—unfaithfulness to the tie, or its moral equivalent.

And in the case of separation for just cause—which He does not forbid—He does not permit a second marriage. In His view, the unhappy partners must bear the evils they have brought upon themselves, for the sake of the general good. At least this would seem, from the few words reported, to have been the position of the Founder of Christianity; and the words are quite as distinct as many on which lasting Christian customs and doctrines and institutions have been founded.

In a matter, however, of such vast importance to society, it would not be wise to form our permanent judgment as to the teachings of Christianity from a few literal words of Christ. There may be qualifications which have not been reported to us, or other commands which have not reached modern times. We can only reasonably infer from the language and drift of the gospel historians, that our Lord attached the highest sanctity to the idea of marriage, and taught the exceeding strictness of the tie, allowing no cause but unfaithfulness, or some equivalent moral evil, to be a cause of separation.

Here, again, as we shall show later, the Leader is far in advance of His followers; and the modern Christian world itself has not yet accepted the principles of their Teacher. The Apostles followed on in the same footsteps. Marriage was, to them, a mystical union of the most holy and ennobling character. Under the great Christian idea that the body was "the temple of the Holy Spirit," all forms of illicit intercourse were profanation, and marriage like the union of Christ with the souls of his followers. This elevating and wholesome idea, which was equally

removed from asceticism and sensuality, was thrown as a new purifying element into the fetid mass of Roman vices and evil habits. The early Christians illustrated the principle with their lives and ennobled it with their death. Their wives shared every persecution and pain of mortal life, and the repeated inscriptions on their tombs showed that the hope of sharing immortality together lighted up even the ghastly arena with heavenly joy. Though the Master had not promised the continuance of the relations of earth in the present form, it became a favourite Christian inscription over the grave that the departed had been the husband of but one wife, or the wife of but one husband in the life below.

It is true that this sense of personal purity worked at length beyond the original teachings, and produced great calamities in the world, by the doctrine and practice of asceticism. The history of celibacy in the early centuries after Christ down to the Middle Ages, forms one of the darkest features in the annals of the Church. The practice was commenced, no doubt, under reasonable motives, to give greater freedom to the religious teacher in a wild age, and enable him to consecrate himself more absolutely to the work of religion. It was stimulated by the Oriental spirit of asceticism which early entered and finally corrupted the Church. The opposition of the most elevated spirits of the Church assailed it in every century; but it was sustained by the astute ecclesiastical leaders, who feared the growth of a kind of ecclesiastical feudalism with a married clergy, where power and possessions would be transmitted from the priest to his children. It became the interest of the Roman *curia* to cut off every servant of the Church from human ties, making itself the sole power in the ecclesiastical world. A priest with children and possessions, it was thought, would never

be an utterly obedient and faithful servant to churchly authority. Devoted Christians in every age, among the clergy, opposed the practice, but the power of organization, the interest of authority and no doubt often an exaggerated asceticism, overcame them. The custom at length proved one of the curses of humanity. As has been frequently remarked, it withdrew the most able and earnest among religious men and women during many centuries, from family life, and cut off their legitimate line. Those who were the most sincere left no children, and by so much diminished the inheritance of human good. The weak and dishonest left children to chance care and public protection, and thus increased the numbers of those exposed to moral dangers and physical suffering. Then, worst of all, the practice let loose through the early and middle ages after Christ, a fearful flood of licentiousness, hidden indulgence, crime against families, and even unnatural vices. The licentiousness of the convents and clergy became one of the greatest obstacles to the progress of the Christian religion.[1] But for all this Christianity is not responsible. Asceticism was, in part, a natural reaction against the boundless licentiousness and immorality of the Roman world.

The Christian influence, it is true, worked with only partial success in its struggle with Roman customs and laws in regard to marriage. The laxity had too deeply penetrated the habits of the people. We have seen that the legislation under the Christian emperors was of a shifting character, and it is evident that the old customs of the Romans long resisted the new ideas. Christianity

[1] The best history of this important topic is contained in Mr. Lea's admirable *Historical Sketch of Celibacy*, one of the clearest and most valuable works on the Middle Ages, yet written.

laboured in two directions: it strove to ennoble and make firm the marriage relation, and it by no means allowed the freedom of action which was permitted to the Roman lady under the marriage of "usus," or the "Free marriage." It elevated the position of woman and the character of the relation between husband and wife; but required of the latter a certain propriety and deference in appropriate things to the wishes of her husband and the rules of the Church, which the Roman *uxor* had not latterly known. The influence, however, of the Church on Roman law relating to marriage and the sexes, is to be distinguished from that of Christianity. All that the latter taught was personal purity, and the absolute sacredness of the tie.

But when we hear in Justinian's[1] *Novellæ* that nothing in human affairs is so much to be venerated as marriage, we may be sure that here is a clear trace of the new influence.

We contrast the position given to women by one of the noblest of the Stoical jurists, Paul, who wrote in the third century, but under no influence from the new Faith "Women," he says, "in every kind of affairs and obligations, whether in behalf of men or women, are prohibited from having any concern."[2]

When Justinian says:[3] "We enact then that all persons, so far as they can, should preserve chastity, which alone is able to present the souls of men with confidence before

[1] Nihil in rebus mortalium perinde venerandum est, atque matrimonium. *De Nuptiis.*

[2] In omni genere negotiorum et obligationum, tam pro viris quam pro feminis, intercedere mulieres prohibentur. (*Paul. Sent.*, lib. II. t. xii.)

[3] Sancimus igitur omnes quidam, secundum quod possunt, castitatem agere; quæ etiam sola Deo cum fiducia potis est hominum animas præsentare. (*Nov.*, iii. 1, 14.)

God," we know immediately that here is a faint reflection of the new Light shining in the world. And when the law-giver expresses his belief in the Lord God, that through his zeal for chastity, a great benefit will accrue to the Republic,[1] we can see distinctly the workings of the new power.

Under Christianity begins that position of woman, which has been since both an element and an evidence of the progress of the most civilized races. With all changes of society, she has never lost the halo which the new Faith threw about her then, and, as we shall show later, even the submergence of the Roman empire under the Northern barbarians, only aided the influence of Christianity in exalting the weaker sex.

Sir Henry Maine, in his valuable work on the "Early History of Institutions," states that the existing written law of the Hindoos has preserved many of the strict and harsh features in regard to the paternal and marital power, which belonged to the ancient despotism of the family, and is distinguished for "its excessive harshness to the personal and proprietary liberty of women."[2]

Whatever independence from the family despotism has been secured to the child or the woman in India, he justly attributes to the influence of religion—the ancient faiths of India. Wherever there prevailed any belief in responsibility after death,[3] "the conception of the individual who was to suffer separately was necessarily realized with extreme distinctness," and it is this conception of the individual and his rights which lies at the basis of the great modern legal reforms.

[1] Credimus in Domino Deo, etiam ex hoc nostro circa castitatem studio, magnum fieri nostræ republicæ incrementum. (*Nov.* xiv 3, 1.)

[2] Page 303.

[3] Page 331.

It is not improbable that Buddhism, in teaching the absorption or annihilation of individuality (*nirvana*) in divinity, may have also aided in giving that inferior position to woman which is characteristic of Oriental countries.

The author quoted above, who is certainly not too favourable to Christianity, admits that among all the influences which have made the two great branches of the Aryan races so different—the Hindoos on the one side and the European on the other—the one most powerful in forming the civilization of each is, that the one branch steadily carried forward the series of reforms which elevated woman, and the other, though going a little way, recoiled from them.[1]

In other words, the European races lived under the peculiar influence and stimulus of the teachings of Christ, and the Hindoos under non-Christian faiths. The former everywhere tended to elevate woman, both through the individual responsibility taught and through the example of the Teacher. The latter only partially ensured this end.

Unnatural Vices.—In one violation of personal purity, the Christian system has achieved a signal and lasting victory; and yet—so far has the Christian world advanced beyond the Greek and Roman standards—the subject itself has become revolting and abhorrent to modern tastes. But to omit all mention of it would be to leave out of view one of the great and beneficent triumphs of the system of morals which came forth from the teachings and life of Christ. Our Lord Himself never speaks of unnatural passions. The very spirit of His personality would banish even the thought of them, and the personal love He inspired put the soul far above all temptation under them.

[1] *Early Hist of Inst.*, p. 341.

One great philosopher, who in Greek and Roman history approached nearest Jesus in his conception of the reforming and renovating power of love to a Divine character—Plato, speaks with a despairing sadness of these lusts which were eating out the vigour and character of his people. He evidently looks to the future abolition of these fearful evils as remote as we would in this day to the removal of prostitution, or the entire doing away of war. Three principles or moral forces, he says in the "Laws," may break up these evils. First, that of piety, or love to a Divine person; second, the desire for honour or the respect of the good; and thirdly, the love of moral beauty—that not of the body but of the soul.[1] "These be perhaps romantic aspirations, but they are the noblest of aspirations, if they could only be realized in any state; and, God willing, in the matter of love, we may be able to enforce this." He urges then that those, not only guilty of these passions, but all who sinned publicly against the marriage tie, should be excluded from all civic honours and privileges, and be deemed strangers and barbarians. In another passage, he says, "Now if a law to this effect could only be made perpetual, such as already prevents incest, such a law, extending to other desires and conquering them, would be the source of ten thousand blessings.

[1] ἓν γένος ὄν, περιλαβὸν τὰ τρία γένη, βιάζοιτ' ἂν μὴ παρανομεῖν.

ΚΛ. Ποῖα δή;

ΑΘ. Τό τε θεοσεβὲς ἅμα καὶ φιλότιμον καὶ τὸ μὴ τῶν σωμάτων, ἀλλὰ τῶν τρόπον τῆς ψυχῆς ὄντων καλῶν γε γονὸς ἐν ἐπιθυμίᾳ, ταῦτα δὴ καθάπερ ἴσως ἐν μύθῳ τὰ νῦν λεγόμεν ἐστὶν· εὐχαί, πολύ γε μὴν ἄριστα, εἴπερ γίγνοιτο ἐν πάσαις πόλεσι, γίγνοιτο ἄν, τάχα δ' ἄν, εἰ θεός ἐθέλοι, κἂν δυοῖν θάτερα βιασαίμεθα περὶ ἐρωτικῶν, ἢ μηδένα τολμᾶν μηδενός ἅπτεσθαι τῶν γενναίων ἅμα καὶ ἐλευθέρων πλὴν γαμετῆς ἑαυτοῦ γυναικός, ἄθυτα δὲ παλλακῶν σπέρματα καὶ νόθα μὴ σπείρειν μηδὲ ἄγονα ἀῤῥένων παρὰ ψύσιν. (*Nomoi*, 8.)

. . . But matters have now come to such a pass that the enactment of such laws seems to be impossible, and never likely to take place; just as the continuance of an entire state in the practice of common meals is also deemed impossible."

The passion of which he speaks arose in Greece undoubtedly from an exaggerated love of youthful beauty, and was, with some of the moralists, like Socrates, one of the purest of sentiments. The three forces of which Plato spoke, were especially thrown into the world by Jesus:—love to a Divine Person; the respect of the good or of His followers; and an elevated feeling for moral beauty. In the mind of the humble follower of Christ was ever that pure and Divine image, into whose likeness he hoped day by day to be changed; around him were the good, whose respect was his comfort; and before his thoughts were oftentimes things pure and noble and of good report.

Nothing shows more distinctly the degradation of the moral sense of the ancient world in these matters than the speech which Plato puts in the mouth of Alcibiades in regard to Socrates, in the drunken dinner of the "Symposium." It is utterly untranslatable to modern ears; and though the great moralist is everywhere pictured as free from vice, his purity seems rather an effect of his intellectual pre-occupations, and is never once spoken of by dramatist, or biographer, or by himself, as any virtue. The Greek, and more particularly the Latin literature, is filled with traces of vices which have utterly passed out of memory in the Christian world. Lucian, nearly all the Latin poets and dramatists, Apuleius, Petronius Arbiter, Athenæus, reveal a debasement of morality among classes not corrupted by luxury, which has not been known in modern times. It is not that, like Juvenal, they pick out extreme immoralities for a biting sarcasm; but they

allude casually and without shame to excesses and habitual vices, whose very name is lost to modern ears. Even Cicero says soberly that it was held as a disgrace among the Greeks not to indulge in unnatural vices.[1] He did not say that his own countrymen fell even lower than the Greeks.

The early Christians set themselves like a wall against this tide of sensuality. The plain words of the Apostle are well known.[2] Where Christianity had the faintest power, there such impurity could not even be thought of. As soon as its influence reached legislation, we find a vigour of denunciation and a severity against these excesses, which show the new Power in the world. The Theodosian Code, which codifies the legislation even of Constantine, orders the most intense punishments on those guilty of such crimes.[3] And again, filled with the Christian idea of the body as the temple of the Holy Spirit, the law-maker speaks of the duty of preserving the abode of a manly soul sacred,[4] and threatens the severest penalty on any who should violate it. Justinian shows even more clearly the influence of the Apostles and of the Scripture in following the new ideas on these crimes. He says, "taught by the Holy Scripture, we know what a just punishment God inflicted on the inhabitants of Sodom," and he warns all who have the fear of God, to abstain from actions so wicked and impious that even the

[1] Apud Græcos, opprobrium fuit adolescentibus, si amatores non haberent. (*De Rep. fragm.*, lib. iv.)

[2] Romans i. 23–29.

[3] Ubi Venus mutatur in alteram formam, ubi Amor quæritur nec videtur, jubemus insurgere leges ut exquisitis pœnis subdantur infames, qui sunt, vel qui futuri sunt rei. (*Cod. Theod.*, ix. tit. vii. 2, 3.)

[4] Sacrosanctum cunctis esse debere hospitium virilis animæ; nec sine summo supplicio alienum expetisse sexum, qui suum turpiter perdidisset. (ix. t. 7.)

brutes do not commit them.[1] And still again, the law bids the offenders who violate nature, to bear in mind the fear of God and a future judgment.[2]

So far as is known, no philosophy or religion among the Greek and Roman races freed mankind from these detestable vices.

The emperors under Stoical influences made some effort to check them, but without success. Domitian punished certain knights and senators for these offences. Antoninus Pius and Marcus Aurelius had the virtue to avoid but not to punish. A. Severus, it is said by the historian, "*habuit*[3] *in animo ut exoletos*[4] *vetaret*"; but he feared the increase of private vice, and therefore let alone the "*scorta virilia.*" These vices still exist among peoples outside of Christianity. They are well-known in Turkey and India. But so imbued has civilized society become with the principles taught by the Master, that such evils are left behind in its moral progress, and no longer threaten the future of the race.

May it be an omen of other triumphs!

[1] Scimus etenim, sacris scripturis edocti, quam justum Deus supplicium, his qui olim in Sodomis habitabant, propter hunc ipsum in commistione furorem intulerit, . . . unde omnes qui timori Dei intenti sunt, convenit, ut a tam impia et scelesta actione abstineant, quam ne in brutis quidam admissum reperire est. (*Nov.*, clx. 1.)

[2] . . . Et ipsi naturæ contraria agunt; istis injungimus in sensibus accipere Dei timorem, et futurum judicium, et abstinere ab hujusmodi diabolicis et illicitis luxuriis. (*Col.*, vi. t. 1. *Nov.*, 77.)

[3] Exoletos suos ut ad longiorem patientiam impudicitiæ idonei sint amputant. (*Seneca, Controv.*, 10, 4; *Ep.*, p. 49).

[4] This expressive word described a class; they were indeed utterly "burned out" in body and soul.

CHAPTER V.

SLAVERY.

THERE is probably no one organised evil in history which has been so replete with human misery, and has drawn after it such a train of vice, degradation and corruption, as slavery. It is doubtful if it ever existed in a worse condition than in the Roman Empire at the time of Christ. In the moral struggle with the abuses of slavery in different countries and ages, especially where the victims were of a totally different and inferior race, it has been the custom in the heat of the argument to speak of modern slavery as worse than that of the ancient world. But closer investigation shows that the system of Roman servitude had more than the cruelty of the modern, and was even more of an irresponsible despotism, while it debauched society and literature beyond what has ever been experienced in any community of recent times.

A distinguished French author on this subject (Wallon) has somewhere said, that for public depravity to reach its utmost depths of licentiousness, there needed to be a being with the passions and attractions of a man, yet stripped by public opinion of all the moral obligations of a human being; all whose wildest excesses were lawful, provided they were commanded by a master. Such a being was the Roman slave. We can see his influence in the disgusting and debasing comedy and poetry of the Imperial age, wherein the relation of the beautiful and

irresponsible victims of power to masters without shame and youth without virtue, is the perpetual theme.

We discern the canker of slavery in the unexampled and incredible degradation of Roman family life in the age accompanying and following the life of Christ. And the political economist finds everywhere in Roman polity the seeds of boundless misery and of certain financial ruin, in the habits and customs born of this institution.

It was not *latifundia*, or the "large farm system," which was destroying the Roman Empire, but the poor agriculture, the waste, extravagance, bad management, aversion to labour, and general discontent—the natural fruit, in the rural districts, of slavery. This unjust system was eating away the character and life of the ancient world, and preparing calamities which should be felt by Europe for hundreds of years to come.

Christ appeared in a remote corner of the Roman empire, in an age when these evils were at their worst, though probably but few of them presented themselves prominently in Galilee.

It might have been thought that the great Reformer would have uttered some words against this stupendous abuse. To the mind of the writer, it has often been a subject of difficult questioning, why He, who felt so keenly the evils of humanity, should not have put forth one simple command against this gigantic system of injustice.

No direct word against slavery, however, came forth from the great Teacher. It was not until the ninth century after, that one of his humble followers, Saint Theodore of Studium (Constantinople), ventured to put forth the command "Thou shalt possess no slave, neither for domestic service nor for the labour of the fields, for man is made in the image of God."[1]

[1] Quoted by Wallon, *Hist. de l'Esclavage*, vol. iii. p. 484.

The explanation of the silence of our Lord is no doubt to be found in the general character and design of His mission, as we gather them from His life and the words recorded of Him. An organised evil almost as destructive and debasing to the world as slavery, was prostitution. Unnatural passions were consuming the life and virtue of the Greek and Roman races. War was desolating almost every portion of the world and bringing after it trains of evils and calamities. Yet Christ only alludes to these, or implies his deep and fervent opposition to, or condemnation of, them.

As is well understood, His aim was to renovate and rescue the individual soul, looking forward through that, n very remote ages, to the establishment of the "kingdom of God" on the earth, or in other words, to the social and complete reorganization of mankind on His principles. We find no evidence in His words, that He even designed to form a Church or general organization of believers, but rather that He expected that little gatherings and brotherhoods of those who loved and followed Him would form themselves for mutual good. His language in innumerable similes showed that He believed that these principles He taught would only be successful after long periods of time and gradual development. Most of His figures and analogies in regard to the "kingdom of God," rest upon the idea of slow and progressive growth or change. He undoubtedly saw that the only true renovation of the world would come, not through reforms of institutions or governments, but through individual change of character, effected by the same power to which Plato appealed—the love-power, but a love exercised towards Himself as a perfect and divine model. It was the "kingdom of God" in the soul which should bring on the kingdom of God in human society. With such a mission and such an aim, or filled

with such intense sympathy towards men and such a profound sense of what God could effect in each human soul, the institutions and practices of men would sink away as of comparatively little importance. The enduring things below all governments and organized evils, were the human conscience and the human affections. If they were pure and right, all else would gradually become so. Such an aspect of human life naturally takes no account of some of the grandest movements of reform in different ages. To a certain extent it is apart from all efforts for liberty, for improvement of laws or the advancement of science, for the spread of temperance or education, for opposition to social impurity, for the protection of children and the elevation of the poor. And yet ultimately this Christian system will be found at the basis of all these great movements of progress in human history. But it began by aiming at the individual and not at society, and aiming alone at an entire change of the affectional and moral tendencies.

If our Lord may be conceived as looking at the immediate consequences of His inspiration and His teachings (which we doubt), it may well be that He would hesitate before preaching the duty of immediate emancipation in the Roman empire as it then was. The truth is, that a fathomless pauperism was then covering the empire—the result of conquests, oppression, bad finance, invasion of barbarians, and slavery—and to thousands of the poor slavery was a less evil than the poverty they endured. As we shall relate afterwards, there came a time when an imperial law, permitting those who "took up" exposed children to make slaves of them, was a law dictated by motives of humanity. It is doubtful if the world has ever seen an era when so many human beings were exposed to such bitter poverty, and even to starvation, as during the

few centuries after Christ. Now for a Divine teacher to have proclaimed, then and there, the duty of absolute and immediate emancipation, would have plunged the Roman world into a "misery" beyond all bounds of conception, and would have let loose a war of extermination between masters and slaves, which would have turned Europe and Asia into a field of blood and slaughter. The principles which Christ taught evidently must overturn slavery from its foundation. They scattered the seeds of absolute freedom and equal justice. They destroyed all distinctions of caste and race. The individual soul became of infinite importance and of equal value, whether in the slave or the king. The Apostles only followed in the footsteps of the Master. In the great community of the lovers of Christ, "bond and free" were alike. There was no distinction in the sight of God, none in the Church. They recognised slavery as they recognised the tyranny of Cæsar, but they put the slave, in their treatment and their language, on the like footing with his owner. And the owner could only be a member of their association by professing to be willing to treat his servant as he would himself in like case be treated. The slave partook of the memorials of the life and death of the Lord side by side with his master. The infant *ecclesia*, or assembly and brotherhood of believers, began to be a shelter and receptacle for numbers of that great despised multitude—the slaves of the Romans.[1] It is true that in the succeeding centuries bishops and clergymen not unfrequently held slaves. But the spirit of Christianity began immediately that long contest with human slavery, which, under changing fortunes and with many defeats, has been waged now for eighteen centuries, and may be said only to have won its final

[1] It should be remembered that the Romans excluded their slaves from a share in patriotic worship. (*Cat. De Re Rust.*, 143.)

victories in the middle and latter half of the nineteenth century.

In considering this and similar struggles, it should be understood that I distinguish always between "Christianity" and "the Church." The history of the latter has been by no means consistent with, or a development of, the spirit of its Founder. Its course has been not seldom marked by the qualities which He most condemned. It has committed gigantic blunders, which have retarded for ages the progress of His principles. An organization may bear the name and represent some of the features of a great principle, and yet in others be entirely inconsistent with it. No true Republican would admit that the first French Republic represented the genuine idea of a Republic, even if it had been transmitted under that name for many centuries. Under the term "Christianity" we include the principles and moral sentiments taught and illustrated by the life and words of Christ, as they are made known in the writings of the gospel historians and the Apostles. They form a sufficiently distinct body of moral teaching, and are often an entirely different matter from the teachings or the example of the professed followers of Christ.

Christianity and Roman Law upon Slavery.—In studying the influence of Christianity upon slavery in the Roman empire, we are never to lose out of view the noblest school of moralists which the world has seen outside of Christian believers—the Stoics. These philosophers had a profound effect upon Roman jurisprudence just preceding the Christian emperors. The statements and principles of the Stoical jurists in regard to liberty and natural right have become apopthegms of liberty, and have influenced all succeeding ages. They have reappeared in the declarations and charters of American freedom, and

in the enthusiastic statements of the French writers on Natural Right.

It does not appear, however, that they had any very strong effect upon the position of the slave under Roman law, and still less on the practices of the people towards this unhappy victim. The Stoics were even more inconsistent with their principles of humanity than the Christians; and some of the most heartless acts of inhumanity recorded in ancient history are those of Stoics to their slaves.

Cato deliberately gives permission to sell an old, or a sick slave.[1]

The following instance is related by Tacitus[2]: A wealthy citizen of Rome had pledged freedom to a slave, and had broken his promise. The man, enraged and disappointed, assassinated his master. By law, in such cases, all the slaves under the same roof should be executed. The public duty in this case was discussed in the Senate; and the celebrated Stoic, Cassius, defended the law, and urged its enforcement. The slaves, all innocent, to the number of six hundred persons, were finally executed.

Plutarch says that Flaminius put a slave to death merely to afford a spectacle to a guest who had never seen a man die. Cato, the Stoic, when he put one to death, used to take the opinion of all the others before killing him. The story of Pollio—also a Stoic—is well known as related by Seneca; how he amused himself by feeding his fish with fragments of his mutilated slaves. Many were furnished to the amphitheatres to be killed in the public festivals. Old and infirm slaves were abandoned to die of hunger. Many were brought to an island in the Tiber and left in

[1] Vendat boves vetulos, oves deliculas . . servum senem, servum morbosum vendat. (*Cato, De remot.*, 11.)

[2] *Ann.*, xii. lib. 42.

the temple of Æsculapius to the care of the god. The poet says of such, that to help them only lengthens out a life of misery.[1]

Juvenal, who wrote when Stoicism had full sweep among the Roman cultivated class, asks with bitter irony, "how a slave could be a man." [2]

The Stoic Ulpian speaks of "a slave or any other animal" [3]; even as the book of Revelation describes the wealth of the wicked Babylon, as in "the bodies and souls of men."

Seneca the Elder says that a slave has no hearth nor religion.[4]

Even Gaius, the Stoical jurist, under the rule of that mild philosopher, Marcus Aurelius, could observe incidentally that with almost all nations, the right of life and death is given to the master over the slave; [5] and he classes slaves with animals. Yet even he speaks of "manumitting in church," [6] as if Christian ideas had reached the legislation of the Stoics, and he afterwards quotes: "This age [7] of humanity," as if he felt the new Power which was permeating the world.

Still the inconsistencies of the Stoics should never cause mankind to forget that one of those condensed expressions

[1] De mendico male meretur qui ei dat quod edit aut quod bibat
Nam et illud quod dat, parcit, et illi producit vitam ad miseriam.

[2] O demens! ita servus homo est!
Hoc volo, sic jubeo, sit pro ratione voluntas!
(*Juv. Sat.*, vi. 475.)

[3] *Ulpian. Dig.*, vi. 1, 15. [4] *Controv.*, 10, 21.

[5] Apud omnes peræque gentes animadvertere possumus, dominis in servos vitæ, necisque potestatem esse. (*G.*, c. I. *A.*, 52.) Servis, et jumentis, ceterisque rebus. (vii. 1, 3.)

[6] Nam qui voluerit aut in ecclesia . . . manumittere *G.*, I ii. 1.)

[7] Hoc tempore. (*G.*, II. x. 1.)

of human instincts, which has been a charter of liberty to so many races and countries since, embodied by Justinian in a Christian code, came originally from a Stoical jurist. "By natural right all men are born free; by right of nations (*i.e.*, by conquest) slavery has come in." [1]

The number of Roman slaves can only be judged of by side indications. A law of Augustus forbade a poor exile from carrying away with him more than twenty slaves; another reduced the number which could be maintained by testamentary provisions, making one hundred the maximum, which, from the proportions mentioned, would indicate that five hundred was not an uncommon number to be owned by one person. We hear from Seneca,[2] of a master counting the roll of his slaves as a general counts his soldiers. Martial alludes to an eccentric person being attended by from ten to two hundred slaves; Pliny says that Cæcilius left 4,116 slaves after his death. The poets mention them as the sign of wealth; [3] the want of them was the last evidence of poverty.[4] Tacitus speaks of the city becoming frightened at the increasing number of slaves.[5] A proposition was once made in the Senate to indicate the slaves by their dress, but was dropped because of the danger that the slaves would outnumber the freemen.[6] When Alaric besieged Rome, he was aided by a force of 40,000 slaves from the city itself. The number

[1] Cum jure naturali, omnes liberi nascerentur; . . . jure gentium servitas invasit. (*Nov.*) (*Dig.*, l. 4. *L.*, xvii. 52.)

[2] *De Tranq. an.*, IX. v.

[3] . . . quot pascit servos! quot possidet agri
Jugera! (*Mart.*, xxii. 88, 3.)

[4] Isti quoi neque servus est, neque arca. (*Cat.*, xxiv. 5, 8.)

[5] In urbem jam trepidam ob multitudinem familiorum. (*Ann.*, ix. 27.)

[6] Si servi nostri numerare nos cœpissint (Sen., *De Clem.*, 24.)

evidently was formidable throughout the period immediately succeeding Christ.

In his legal position the slave was a property, whose nature nothing but the will of the master could change; he could be given, let, sold, exchanged, and seized for debt. He had no civil rights; could enjoy no legal marriage, only cohabitation (*contubernium*), and therefore could not be accused of adultery.[1] He had no legal parentage, no property, no right to legacy; could sustain no action before a court, could not be a witness, and his testimony was only legal with torture.[2]

Of his capacities and moral nature it was said, "immodesty is a crime in a freeman, a necessity in a slave, a duty in a freedman (or liberated slave)." Still, with all this, the Roman slave was not considered in law as altogether a thing. The Cornelian law against murder applied to all conditions of men. The Stoical spirit had begun before Christianity to bring about some alleviations to the lot of the slave. A certain right of property was given him, and under Adrian a master was forbid to kill his slave. Under Antoninus Pius, a master who killed his bondman without cause was punished for homicide. Severus forbade personal injury to foreign slaves. The Petronian law prevented masters from delivering servants to be employed in the combats of wild beasts. Adrian prohibited the sale of slaves, without the intervention of judges, for the contests of gladiators; and Marcus Aurelius, as one would have expected from his humanity, enacted a similar law with reference to the combats of wild beasts. Antoninus Pius permitted slaves to be sold, rather than punished, who took

[1] Servi ob violatum contubernium adulterii nomine accusari non possunt. (*L.*, 23. *C. J.*, ix. 9. *Ad. leg. Jul. de Adult.*)

[2] Sine tormentis, testimonium ejus credendum non est. (*L.*, 21, 2. DXXII. *De Testi.*)

refuge at altars or before sacred images. The recourse of law was gradually had to prevent other abuses of the servile class; thus the application of torture to servants on trial or as witnesses was by degrees disused. Those blessed words so much used by the Stoical jurists, "favor libertatis,"[1] the presumption of liberty, came to have more and more power on legislation. This was especially true of the interpretation of wills. It was not permitted to bestow liberty for a certain number of years; "once free, always free," was the motto. If a slave had partly paid for his liberty, and his time of manumission had come, it was not held humane to cause delay through a question of pecuniary profit.[2]

Nothing shows better how comparatively superficial the influence of Stoicism was, how confined to the Roman cultivated classes, than the unhappy position of the slave, both in custom and law, through all the reign of this noble philosophy. Even the influence of Christianity, when united with the government, had a long and often defeated struggle to ameliorate the lot of the unhappy victims of man's greed and cruelty.

The union of the Christian Church with the State under Constantine we regard as one of the great blunders of the historical Church, which has drawn after it a long train of evils, whose effects are even yet experienced. Could Christianity have been permitted to grow, as it did under the Apostles, in little voluntary associations of believers, unconnected with the civil power and with a simple organization, we should not have had, indeed, the grand spectacle of an apparently converted imperial court, and an official

[1] Ulpian. (XI. *De fib. lib.*)

[2] Neque humanum fuerit ob rei pecuniariæ quæstionem libertati moram fieri. (*Ulpian.*)

hierarchy, and a Church supported by armies and governed by warriors and courtiers, and of vast populations suddenly made into nominal Christians—but we should have been saved a paganized peasantry, a corrupt priesthood, a hierarchy full of greed and ambition, ages of blood and religious warfare, and a Church which persecuted both science and differing opinions. The Christian faith would have grown up where it belongs—in quiet, humble places—and have reformed manners and morals before it took hold of legislation. Christ's principles would have been a spiritual power in the world, not a form or an institution, and would thus have finally permeated society. So far from regarding the rapid spread of the Christian religion in the Roman world as a sign of its Divine origin, and an evidence of its triumph, we consider it as almost a fatal occurrence, and as having impeded the spread of Christ's real truth ever since.

We are aware of the very strong arguments presented by liberal Catholic writers for the early union of State and Church. It could not but be productive of some good in a barbarous age. But the present spiritual condition of a large part of Europe, is a proof how great was the mistake then made. The best effect of this union was seen in legislation. A new spirit began at once to influence Roman law. We only claim that this influence would have been more thorough and more lasting had it more generally pervaded society first, and reached the law-givers through the people.

Whatever motives Constantine himself may have had in his change of faith, the jurists who framed his legislation were evidently inspired and influenced by Christianity. In laws relating to slavery, we hear of being "imbued with Christian discipline"[1] as a reason for humanity; of

[1] Christianâ disciplinâ imbutus. (*Cod. Theod.*, ix. 12.)

emancipating in church with "religious purpose,"[1] and numerous other expressions which indicate the new forces working on the law-givers. The "Day of the Lord" has become a day appropriate to emancipation and to a rest from all litigation;[2] and emancipation in church has the same legal force with the formal emancipation of a Roman citizen. The official setting free of a slave became common as an act of piety or gratitude to God at recovery from illness, at the birth of a child, at death, or in wills. Many charters and epitaphs bore the expression of "liberty for the benefit of the soul."

The Church early included a prayer in its liturgy "for them that suffer in bitter bondage." The burial inscriptions and pictures recently made known, often show the masters standing before the Good Shepherd, with a band of their slaves, liberated at death, pleading for them at the last judgment.[3] But scarcely any Christian inscription speaks of the dead, as a "slave" or "freedman," but only of the "slave of Christ"; or the "freedman of Christ";[4] as if human slavery could not even be mentioned in the kingdom of God.

A series of remarkable laws under Constantine showed the new spirit working upon legislation. In 312 A.D. a law was passed declaring the poisoning of a slave or the tearing his body with the nails of a wild beast, or branding him, to be homicide. In 314, liberty was declared a right which could not be taken away: sixty years of captivity could not take from the free-born the right of demanding liberty. In 316, Constantine

[1] Religiosa mente in Ecclesiâ. (*C. T.*, ix. 7.)

[2] Ut in die Domini, manicipare et manumittere liceat, reliquæ causæ vel lites quiescant. (*C. T.*, l. 2. *C.* 3, 11.)

[3] Le Blant, *Inscript. Chrét. Acad. de Sc. etc.*

[4] De Rossi, *Bull. Arch. Chrét.*, 1866; and *La Roma sott. Christ.*, tom. iii. 1877.

writes to an archbishop: "It has pleased me for a long time to establish that in the Christian Church, masters can give liberty to their slaves provided they do it in presence of all the assembled people and with the assistance of Christian priests, and provided that, in order to preserve the memory of the fact, some written document informs where they sign as parties or as witnesses."[1] In 321, he directs that "he who under a religious feeling has given a just liberty to his slaves in the bosom of the Christian Church, will be thought to have made a gift of a right similar to Roman citizenship." But this privilege is only granted to those who emancipate under the eyes of the priest.[2] In 322, various laws defined methods by which persons whose liberty is assailed, even after sentence, may present new proofs of liberty and secure it.[3]

The progress of legal emancipation under the Christian emperors was slow but certain. Each new ruler enacted some measure which made emancipation easier. The informer against those guilty of certain capital offences, became free. Theodosius the Great freed those who had been circumcised by the Jews, and those who informed against a deserter; and the emperor Zeno, those who joined the monastic life with the consent of their masters.

A few words from the priest, even away from the church, would manumit the slave.[4]

The law threw every obstacle in the way of separating families. "Who can bear," says the Theodosian Code,

[1] *Cod. Just.*, lib. vi. tit. l. 3.
[2] *Ibid.*, lib. i. tit. 13, l. 1.
[3] *Ibid.*, lib. i. tit. 13, l. 2. *Ibid. Nov. et Cod. Theod.*, lib. iv. tit. 7, l. 1.
[4] De Manumissionibus in ecclesiâ. (*Ibid.*, lib. iv. tit. 7, l. 2.)

"to see children separated from parents, brothers from sisters, wives from husbands?"[1]

The master was held legally as a murderer, if by torture or branding he caused death, after the cruel customs of the horrid barbarians.[2]

Let the reader compare this with the command of one of the purest of the Stoical jurists. "If by chance there is doubt . . . for the sake of discovering the truth, let hereditary slaves be tortured."[3]

In 441 A.D. a church council (Orange) enacted that a slave once emancipated in church, could not be made either slave or serf again, without incurring ecclesiastical censures.

Justinian's Reforms.—It is, however, finally under Justinian that the great moral power of Christianity begins most to be felt in the Roman law upon slavery. The Institutes (quoting indeed an older law) speak of that age as one of special humanity, when no one is permitted to be cruel to his slave without legal authority.[4]

All presumptions are to be now in "favour of liberty." Thus if there chance to be several owners of a slave, the will of any one could emancipate, and the others are forced to accept compensation at a reduced valuation.[5]

The drift is everwhere towards "the inestimable value[6] of liberty."[7] Slavery was suppressed as a penalty. "We

[1] Quis ferat liberos a parentibus, a fratribus sorores, a viris conjuges, segregari. (Lib. ii. tit. 24.)
[2] Sâevitia immanium barbărorum. (Lib. ix. tit. 12.)
[3] Si fortasse de filiis aliqua dubitatio habeatur, ut veritas inveniri possit, torqueri servi hereditarii jubentur. (*Paul. Sent.*, v. 16).
[4] Sed hoc tempore, nullis hominibus licet sine causâ legibus cognitâ in servos suos supra modum sevire. (*Inst.*, p. 109).
[5] *T. C. I.*, vii. 7. *De Comm. Serv. Manum.*
[6] Quum libertas inæstimabilis res sit. (*Inst.*, I. vi. 7).
[7] Pro libertate, quam et favere et tueri Romanis legibus . . . peculiare est. (*Comm de Manum.*)

do not transfer" says the Imperial law-giver,[1] "persons from a free condition into a servile—we who have so much at heart to raise slaves to liberty." He liberates the mutilated; and those who had served in the army with the knowledge of their master, became as freeborn. Liberty was a reward to certain informers against cer tain offences. The marriage of slaves was strengthened, and the marriage of a free woman with a foreign slave was not forbidden; a freeman could marry a slave woman by first freeing her.

A slave who was ordained priest became free by the act usually with the consent of the master. The monasteries became refuges of slaves. Justinian's Code required every slave entering a monastery to pass a novitiate of three years, during which he might be claimed; if he was proved guilty of theft, he was to be delivered up to his master, but to suffer no further injury. If nothing was proved against him, and he was not claimed, at the end of three years he was considered "to belong to the common Master of all." A slave-priest, if he renounced his sacred office, became slave again.

The old law had fixed a limit to the age under which a bondman could be freed, and the number who could be thus emancipated: it demanded of freedmen a maturity of thirty years, and created different degrees between the citizen and slave. Justinian abolished all this scale. Legacies and testamentary provisions made before the final will, had been considered null. The new code changed this in favour of liberty. The dying man in his last moments, could set free the infant in the bosom of its mother. If the heir received directions to free one slave, all became free. The new code takes the smallest

[1] *Nov.*, xxii. 8.

indication as sign of the master's purpose to free his slave. The marriage of the master with a bondwoman freed and legitimated all the children; and even without marriage, if a slave had the position of wife, she became free with her children, and equally so if bequeathed as a wife to a freedman. The law gave a new value to all familiar modes of enfranchisement, whether by letter or in presence of friends; by abandonment, or by covering the slave with a symbolic bonnet at the funeral of his master, or by marriage. The code, with a certain enthusiasm uncommon in such dry documents, declared its purpose "to have the Republic frequented by freemen rather than liberated slaves."[1]

Among other laws, one act made the violation of a slave-woman an equal offence with crime committed upon a free—punishable by death. The moveable property of bondmen became their own property, and with it they often purchased their liberty.

Other acts made the killing of a slave with malice aforethought, homicide; and the death of a slave after certain barbarous punishments, equivalent to the same offence. Masters also were enjoined to send their sick and useless slaves to the hospital.[2]

We find, too, an expression in the code, as if an influence from the new Religion of humanity, "the intuition of humanity."[3]

Slaves or freedmen could arrive at the most important offices, provided the masters did not oppose.

The legal weakening of slavery proceeded by various steps, such as the forbidding the sale of new-born in-

[1] In nostrâ Republicâ . . . quum nobis cordi est, ingenuis magis hominibus, quam a libertis, eam frequentari. (*De Bonis.*)

[2] *Cod.*, ix. 14.

[3] *Dig.* XL., ix.

fants; the introducing new modes of emancipation by the Christian Church; the delay afforded in proof of liberty and the legal presumption in its favour; the privileges granted in reclaiming it, and many precautions taken to prevent slavery from being used for purposes of unchastity and of crime.

Reforms under other Emperors.—Under the Emperor Leo (717 A.D.) all slaves on imperial domains were allowed to do with their property as they chose; the law thus at once recognising the ownership of property by a large body of bondmen. Again, the marriage of a free woman and a slave was recognised as legal. The woman could buy her husband, to associate him in her liberty, or share his servitude till the death of the master, which at once freed them and their children; or the man could free himself by labour for a term of years, which term was fixed by law. The same rules applied to slave marriage, if one of the parties became free. Many Christian freedmen married noble-born women (feminæ clarissimæ[1]). One great source of slavery was dried up in this age of "misery" by a law forbidding a freeman to alienate his liberty. Other acts encouraged emancipation. A slave-child held over the sacred font of baptism by the master, his wife or son, became free in the act. A servant taken prisoner by the enemy, was lost to his master; and if he was returned to Roman territory, he became a freeman, provided he had suffered in the public service. By a law under Basil (867) it was declared that if a property reverted to the state, the slaves in it became free, If a man died intestate, two-thirds of his property fell to his natural heirs, and one-third went to the state: in this one-third were reckoned the slaves, who thus became free. "It would

[1] De Rossi, *La Roma sott.* Renan, *M. Aur.*, c. 11. Tertull., *Ad uxor.*, 11, 8.

be an outrage," says the law, "to the holiness of God, to the wisdom of the prince, and to the conscience of man, not to permit the death of the master to break the yoke of servitude."

In the tenth century the state preserved a right over the sale of prisoners and of slaves. In 1098, Alexius Comnenus was obliged to invoke the great principle of Christianity, "One God, one Faith, one Baptism," and order all slaves to be freed to whom their masters had refused the benediction of the Christian Church. Legislation became more severe against bondage: the bondman could produce witnesses in favour of his freedom and opposing testimony was not received. If a person was claimed as a slave and could produce witnesses of good character in his favour, his oath could annul the suit (1094 A.D.). Manuel I. (1143) proclaimed freedom to all fallen into slavery through the sale of property, or who had been forced to sell themselves from reasons of poverty.

Slavery is alluded to in the Eastern empire in 1344, 1358, and 1394. It existed in Greece till 1437.

Among other terrible results of the pauperism of the Roman empire, the masters were in the habit of forcing freemen to contracts which alienated their independence. To check this, Manuel Comnenus declared free all who had been born in liberty.

In the ninth century, as we stated before, is the first formal mention of a command of the Church against slavery itself. They are the words of St. Theodore of Stude. "Thou shalt possess no slave, neither for domestic service nor for the work of the fields; for man is made in the image of God."

No one can carefully study this long series of laws, from Constantine to the tenth century, in regard to slavery,

without clearly seeing the effect of Christianity. It is true that the unjust institution still survived, and some of its cruel features remained; but all through this period the new spirit of humanity is seen struggling against it, even in legislation, which is always the last to feel a new moral power in society. The very language of the acts speaks of the inspiration of the Christian faith; and the idea which lay at the bottom of the reforms, the value of each individual, and his equality to all others in the sight of God, was essentially Christian.

But laws are often far behind the practices of a community. The foundation idea of Christ's principles compelled his followers to recognise the slave as equal with the master. They sat side by side in church, and partook of the communion together. By the civil law, a master killing his slave accidentally by excessive punishment, was not punished; but in the church, he was excluded from communion. The chastity of the slave was strictly guarded by the church; slave-priests were free. The festivals of religion—the Sundays, fast-days and days of joy—were early connected in the Church with the emancipation of those in servitude. The consoling words of Christ, repeated from mouth to mouth, and the hope which now dawned on the world through Him, became the especial comfort of that great multitude of unhappy persons,—the Roman bondsmen. The Christian teachers and clergymen became known as "the brothers of the slave": [1] and the slaves themselves were called "the freedmen of Christ." [2]

[1] Lactantius, *Dei Inst.*, lib. v. Also St. Chrys. (*Hom.*) (xxii. *in Ep. ad Eph.*) No Christian is a slave; those born again are all brothers.

[2] *Acta St. Justin.*

CHAPTER VI.

SLAVES IN CRUEL AND LICENTIOUS SPORTS

THE full power of Christianity over Roman slavery can only be fully recognised by also studying its influence on the cruel or licentious shows and games, for which the slaves especially furnished the victims and the debauched actors.

The highest gratification which an eminent Roman could furnish to the populace, was in some bloody or licentious show. The Stoics spoke of the gladiatorial games with contempt or reproval, but their censure never reached the masses.

Cicero asks how a cultivated man can possibly take pleasure in seeing a weak man torn by a strong animal, or a splendid brute transfixed by the spear of a well-armed gladiator: [1] and Tacitus dismisses the cruel Drusus, in one of his condensed epithets, as rejoicing too much in cheap blood: [2] Cæsar is said to have had 320 pairs of gladiators at once in the arena, and to add to the scenic effect, the bloody struggles were at night.

Trajan surpassed all in forcing 10,000 unhappy prisoners and gladiators to contend for life in the Roman amphitheatre; the bloody and brutal sport lasted 123 days.

[1] Sed quæ potest homini esse polito delectatio, quum aut homo imbecillus a valentissima bestia laniatur etc. (*Ad Div.*)

[2] Vili sanguine nimio gaudens. (*Ann.*, 1, 76.)

Constantine, in the very year before his acceptance of Christianity, exposed a vast multitude of prisoners to wild beasts in the amphitheatre, and glutted the people with the sight of blood.[1] Under the thorough reform which Christian teaching has introduced in the world, in the matter of bloody sports, we cannot conceive the passion for them among the Roman populace, a passion which centuries of teaching and example scarcely broke up.

It is related of one Prefect of Rome, Symmachus (392 A.D.), that he desired to make a special celebration of a birthday of his little son (parvuli nostri) and for that purpose held in reserve a large troop of Saxon prisoners, who were to be slaughtered by wild animals in the arena. To the intense disappointment of the populace and the grief of the Prefect, our savage ancestors, on the very day of the hoped-for festival, all strangled each other (fractas sine laqueo fauces). The worthy Prefect could only resign himself to the consolations of philosophy.[2] It was reserved for a Christian to remind this philosopher of his brutality, in the well-put apopthegm: "No one should perish in the city whose punishment is an amusement." [3]

It was the peculiar duty of Roman magistrates to provide cruel sports for the people; many made a trade of it.

The early Christians and the Fathers waged a continual struggle against these bloody shows. So strong was the passion for them, that it is related by Augustine of one convert, that he was forced to the spectacle by his family, but carefully covered his eyes, when a shout from the

[1] Tantam captivorum multitudinem bestiis objecit, etc. (*Pan. Con. Aug.*, 23, A.D. 313.)

[2] Sequor sapientis exemplum. (*Symm. Ep.*, II, 46.)

[3] Nullus in urbe cadat, cujus sit pœna voluptas. (*Prud. contra Symm.*, II, 1126.)

multitude caused him to open them in the midst of some bloody scene, and immediately the old savage thirst for blood was aroused, and he became as wildly eager for slaughter as the heathen Romans, and henceforth was an outcast from the Church.[1] Even as late as the time of Salvian (450 A.D.) the converts were led away to these shows, and this great preacher thunders against those renegade Christians who find their highest pleasure in seeing men die in the arena, or, what was worse than death, torn and eaten by wild beasts.[2] In the East the cruel games ceased with the reign of Theodosius, though combats of beasts still continued. Their final abolition in the West, by the heroism of the monk Telemachus (404), who leaped into the arena and gave his own life for the victims, is well known.

The first effect of the new spirit on legislation is seen in a law of Constantine, as early as 325 A.D. "Bloody spectacles," he says, "in our present state of civil tranquillity and domestic peace, do not please us, wherefore we order that all gladiators be prohibited from carrying on their profession." [3]

He also forbade criminals to be sent to the amphitheatre,—a practice he had formally sanctioned ten years before.

[1] *Confessions*, lib. vi. 8. For so soon as he saw that blood, he drank down savageness; nor turned away, but fixed his eyes, drinking in phrensy and madness, and was delighted with that guilty fighting and intoxicated with the bloody pastime. Nor was he now the man he came, but one of the throng he came unto; yea, a true associate of them that brought him hither.

[2] Ubi summum deliciorum genus est mori homines, aut quod morte gravius, acerbiusque, lacerari, expleri ferarum alvos humanis carnibus. (*De Gub. Dei.*, vi.)

[3] Cruenta spectacula in otio civili et domestica quiete, non placuit; qua propter omnino gladiatores esse prohibemus. (*Cod. Theod.*, lxv. tit. 12, l. 1.)

Human Sacrifices.—Besides the influence of Christianity on bloody sports, it should not be forgotten that in the Roman empire, and wherever it has had sway, it has done away with human sacrifices. Whenever, in the earlier history, dangers approached Rome, foreign captives were burned in the forum, though at the same period a poet could say that God was ever gentle and kindred to man.[1] Even in the time of Pliny there were sacrifices of human beings, though Seneca was proclaiming that "man ought to be sacred to man."[2] Still later, emperors like Commodus and Elagabalus believed that they gave the highest pleasure to the gods by sacrificing children of noble birth and beauty.

It need scarcely be said that such cruelties passed away under the faintest light from the Religion of Love. Not only in the Roman empire, but in all countries where Christianity has any influence, have these barbarities accompanying the religious sentiment ceased to exist.

Licentious Shows.—The cruel sports of Rome were not the only source of the degradation of Roman society. The exhibition of licentious shows and immoral plays had a profound influence. The extremes to which these were carried cannot even be explained in modern writings. In fact, few classical scholars who have not waded through the disgusting mire of a large part of Roman literature, can have even an idea of the depth of obscenity and immorality which it reached. Athenæus, Petronius, Apuleius (in his lighter works), Juvenal, and many others, only show how debased even genius and talent may become under such influences as so much of the Greek and Roman religions furnished. Even the universal suffering and ruin of the Roman empire had no influence on the public

[1] Mite et cognatum est homini Deus. (*Silius*, iv. 793.)
[2] *Boissier.*

appetite for these enjoyments. In Salvian's bitter epigram, the empire "ridet et moritur," laughs while it is dying.

It is not strange that the early Christians came to have towards these shows somewhat of the feelings which the English Puritans entertained towards all dramatic exhibitions. They were not only offensive to the new ideas of purity spreading through the world, but they were products of and associated with the idolatrous faith of the day. The Fathers and early disciples set themselves especially to free great classes of human beings who were the peculiar victims of these degrading customs—the slaves of the stage.

The effect of their spirit even upon a half-converted Roman, like Constantine, is striking. Much of his legislation has the sound of Puritan rigidity and purity. A public show of the most indecent description, a great favourite with the populace, called *Maiuma*, wherein, among other licentiousness, nude women bathed before the crowd, was utterly forbidden and denounced as "fœdum atque indecorum spectaculum"; yet, says wisely the law, "we allow ludicrous arts to be practised, lest sadness be produced by excessive restriction."[1] In 385 several laws were passed against the profession of female musicians. who were frequently seduced, and whose business was a means of vice. Theodosius forbade judges and magistrates to be present at theatrical shows after noon, for it was in that part of the day that indecent plays were exhibited. At length all spectacles were forbidden on Sunday, and the prohibition was extended still further to saints' days by Theodosius III. A general endeavour appears in all this legislation to withdraw from such professions all whom

[1] Ludicros artes concedimus agitari, ne ex nimia harum restrictione, tristia generetur. (*Cod. Theod.*, lxx. tit. 6. l. 2.)

poverty or slavery kept in them. In 343 a law forbade procurers from selling Christian female slaves to any except to Christian masters,[1] and authorized priests and all Christians summarily to deliver any Christian women who were about to be handed over to prostitution,[2] and on their complaint they could be brought before the court and delivered from misery. No Christian woman, free or slave, could be forced to serve as a prostitute on the stage; and if a slave, could be freed at once on appeal.

It may here be remarked, that in 439 a law of Theodosius suppressed the profession of the *leno*, or "procurer," in Constantinople; though no legislation could cure the deep-seated disease of Roman society.

Under Constantine, the crime of violence upon a woman which had formerly been punished only when the victim demanded redress, and was then considered merely as a loss of services or property inflicted on the father of the woman, received now the penalty of death, even if the one injured did not bring action.

Justinian's Reforms.—The Roman law, as codified under Justinian, shows a still greater disposition to deliver all Christians who were bound to these foul trades.[3] In case of approaching death, it was provided that if the last sacraments were administered, and still the slaves of the stage recovered, then these women were freed from their

[1] *Cod. Theod.*, lxv. tit. 18, l. 4.

[2] Lenones, patres et dominos qui suis filiis vel ancillis peccande necessitatem imponunt nec jure frui domini, nec tanti criminis libertate gaudere. (*Cod. Theod.*, lxv. tit. 8, l. 26.)

[3] Quæcunque ex his jus modi *fœce* progenitæ, scenica officio declinare . . . deputentur. (*Cod. Theod.*, xv.)

Quicumque Christianus sit in quolibet crimine deprehensus, lude non adjucitur. (*Cod. Theod.*, ix. 40.)

bonds to the theatre. But even then, public officials were bound to sit in judgment as to their need of the last sacraments. The stern Roman law held them bound to these degrading occupations by a "natural bond." They were not even considered worthy of suffering the penalties of adultery. The Christian law forbade them to be taken back to the stage if they had become Christians and were leading a worthy life.[1] If, however, they fell again into their old vices, they were forced to retake their old profession, and could be absolved from it no more until old age drove them from the stage. Justinian also declared all engagements retaining women by force on the stage as null and void. The archbishops were required, in union with the magistrates, to watch over the execution of this law.

When at length these unfortunate women, slaves of sensuality, were excluded from the public stage, they were employed in private festivals, until Theodosius was compelled to forbid by law women from being sold or trained for these social entertainments. Even as late as the eleventh century, the Council of France condemned the presence of the clergy at fetes where such professional actors were employed.

The Church carefully excluded from communion all who had any connection with licentious sports; and so powerful was the new feeling of purity, that even obscene statues in public places were forbidden by law.[2]

It is a part of this new reign of chastity and humanity, that the employment of mutilated persons, as attendants, was forbidden by the Church, and the maiming of them

[1] Quas melior vivendi usus vinculo *naturalis conditionis* evolvit, retrahi vetamus. (*Cod. Th.*, xv.)

[2] Neque unquam posthac liceat in loco honesto inhonestas adstare personas. (*Cod. Th.*, xv.)

was attended with the severest penalties. A slave mutilated became free.[1]

The early Christians not only attacked and weakened slavery by freeing this unfortunate class, who were bound to licentious professions, but their spirit of humanity led to a ransoming of captives, which assumed considerable importance. The laws encouraged this in the highest degree. The Theodosian Code especially exhorts Christians who are near these captives, to take pains in regard to their redemption;[2] and the commentator speaks of the ransoming of prisoners as an act of special generosity.[3] Whole populations were ransomed, and it became one of the first duties of the Church "to set the captive free." The wealth of private individuals, and the treasures of the churches, were continually used for this purpose. One saint (Paul) is said to have delivered himself up to slavery for the sake of saving the son of a widow from captivity.

It was a favourite proverb that "to buy a slave is to gain a soul."[4]

The Christians equally dried up another source of slavery by steadily and consistently opposing, as we shall show later, the abandonment and exposition of children. Their charity, also, constantly saved families from the depths of pauperism which were opening; for, as the eloquent Salvian says, the Roman state in the fifth century, owing to its wasteful financial system and enormous taxation, was "dying as if of strangulation."[5] The tendency, too, of the

[1] *Novell.*, cxlii.

[2] Christianos proximorum locorum, volumus hujus rei solicitudinem gerere. (*Cod. Theod.* v. 5, 1.)

[3] Præcipua liberalitas redimere captivos.

[4] *Const. Apost.*, II, 62.

[5] Quum Romana republica, vel jam mortua, vel certe extremum spiritum agens . . . tributorum vinculis, quasi manibus strangulata, moriatur (*De Gub. Dei*, iv. 1.)

Christian belief must have continually raised the poor by elevating their sense of their own dignity—a sense which in all ages has worked against the degrading tendencies of poverty, and would therefore preserve a population from falling into slavery. Christ and the Apostles taught, by example and words, the value and dignity of labour; and a cardinal doctrine of Christian morals was the importance of industry. The word operative (*operarius*) became elevated in public esteem, and Christian working men and women are praised in the epitaphs for being good workers.[1] In fact, throughout the Roman empire a grand rehabilitation of labour began under Christianity, which has never ceased. All the useless servants of Roman society —the parasite, the pimp, the circus rider, the gladiator, the debauched actor, the representative of indecent amusements, the servant of idols, the object of disgusting and unnatural pleasures, the low and obscene comedian and prostitute—were changed by the new Faith into industrious producers and workers.[2] Work became honoured under the new religion. Christ was reproached by the assailants of Christianity as being born of a "working mother" (operariæ matris); and the Christian *ecclesiæ* became little fraternities of free labourers and competitors of the great slave-estates.[3]

We have already remarked that the word *servus*[4] seldom occurs on a Christian epitaph; as if the believer felt that in the kingdom of Christ all were free. A slave, when examined before a judge, not unfrequently replied, "I am not a slave: I am a Christian—Christ has freed me."[5]

[1] *De Rossi*, "Amatrix pauperorum et operaria."

[2] See Allard, *Les Esclaves Chrét.*

[3] See De Rossi, *La Roma sotter. Christ.*, tomo iii. 1877

[4] Le Blant, *Inscr. Chrét., etc.*, i., 119. [5] *Ibid.*

All these profound moral and legal influences worked against Roman slavery. But the fearful "misery" of the empire still sustained it. So profoundly was Roman society disorganized by its own vices, by bad government, absurd finance, civil war, the invasion of barbarians, and universal poverty among the working classes, that bondage became often the least of many evils threatening.

Serfdom.—In such universal disorder, it is not unnatural that an intermediate state should have formed itself between freedom and servitude. The peasants and poor farmers would find themselves safer under the protection of a larger cultivator, to whom they bound themselves for certain obligations; or the state settled such colonists (*coloni*) on the large farms, holding them bound to the soil, but with many personal rights; or, under these moral forces of which we have been speaking, the personal slave was gradually transformed into the serf bound to the soil.

The serfs or *coloni* began to appear after Constantine; they were especially found on the frontiers of the empire, and in the Gauls, Thrace and Illyria. They were sold with the land; their only obligation being a small rent. They could make contracts, marry, and even acquire property under certain conditions.

Yet the new law, modified by Christianity, protected even the serfs. Justinian was careful not to accept the avowals of *coloni* who would become *adscriptitii*,—those more closely bound to the soil and liable to a tribute,—but demanded other testimony, lest "freemen might fall into an inferior state" from temporary misfortune. He abolished also the legal distinction which existed between three different classes of freedmen, making them all equal before the Roman law. A slave became at once

free by any act of his owner signifying an intention of bestowing freedom.[1]

It is of course understood that many material and even economical causes combined with such a moral power as Christianity to mitigate and overthrow an ancient abuse, like Roman slavery. The province of the moral forces is to stimulate the conscience and sympathies; the result may be hastened or long delayed by external influences.

[1] Nullo nec ætatis manumisse, nec dominii manumittentis, nec in modo manumissionis discrimine habito. (*C. T.*, xix. 17, 1.)

CHAPTER VII.

EXPOSURE OF CHILDREN.

SLAVERY in the Roman world, as we have said, was in part sustained by a practice so revolting and inhuman as hardly to be comprehensible to modern ideas—the systematic exposure or abandonment of the children of the poor, and of female or defective children by the rich. So completely had luxury eaten away the natural instincts in one class, and so deep and degrading was the misery in another, that parents were found willing continually to abandon their offspring to the worst of destinies, in order to escape inconvenience, anxiety or burden;—these little ones, be it remembered, being not usually the fruit of illicit connections, but the children of legal marriage.

One of the most powerful of the natural instincts and affections was, throughout a wide multitude, utterly subverted by the low moral tone of the then civilized world. There are innumerable allusions to this inhuman treatment of young children throughout Latin literature. In two different comedies or dialogues, the husband on starting upon a journey is represented as ordering his wife who is soon to give birth to a babe, to destroy it, if it prove a girl; and the plot of one turns on the wife's foolish weakness in exposing rather than killing the female infant.[1] It has often been observed that the famous apopthegm of

[1] Apuleius, *Met.*, lib. x. Terence, *Andr.*, Act iv. scene 5. *Heaut.*, Act iii. scene 5.

humanity, "I am a man, and nothing of man is foreign to me," which called out such applause in the Roman theatre, is uttered in this play by the very father who had rebuked the mother for thus sparing the child.

Plautus,[1] alludes to the custom of exposing the girl to death, without any especial condemnation. Lucian speaks of it in his "Courtesans."

Stobæus[2] says: "The poor man raises his sons, but the daughters, even if one is poor, we expose." Quintilian's apopthegm is that, "to kill a man is often held to be a crime, but to kill one's own children is sometimes considered a beautiful action among the Romans;" and he admits that the exposed little ones rarely survive.[3] Ovid gives a pathetic picture of the new born whose first day was its last, exposed to wild beasts; and describes those who flit about in the night, seeking for these unfortunate little creatures for the worst of purposes.[4] Pliny[5] speaks coolly of those who hunt for the brains and marrow of infants, probably for superstitious or medicinal purposes.

Seneca gives this horrible description of the mutilation to which unfortunate children were exposed: "Portentos fœtus extinguimus; liberos quoque si debiles, monstrosique editi sunt, mergimus. Non ira, sed ratio est, a sanis, inutilia secernere." (Monstrous offspring we destroy; children too, if weak and unnaturally formed from birth, we drown. It is not anger, but reason, thus to separate the useless from the sound.) (*De Irâ*, I. 15.)

[1] Dat eam puellam ei servo exponendam ad necem. (Act i. scene 3.)

[2] *Serm.*, 75.

[3] *Quint. Dec.*, 306, vi.
Ovid., Fast., vi. 91, Her. Ep. xi.

[4] Alii medullas crurum quærunt, et cerebrorum infantum. (*Plin. Hist. Nat.*, lib. 28, c. 2.)

In another work (*Controversi*, lib. v., 33) he denounces the horrible practice, common in Rome, of maiming these unfortunate children, and then offering them to the gaze of the compassionate. He describes the miserable little creatures, with shortened limbs, broken joints and curved backs, exhibited by the villanous beggars who had gathered them at the Lactarian column, and then deformed them: "Volo nosse," "I should like to know," says the moralist, with a burst of human indignation, "illam calamitatum humanarum officinam—illud infantum spoliarium!"—"that workshop of human misfortunes—those shambles of infants!"

On the day that Germanicus died, says Suetonius (*Calig.*, n. 5), "Subversæ Deûm aræ, partus conjugum expositi," parents exposed their new born babes.

The little ones thus abandoned were gathered, sometimes by witches, to use their bodies in incantations, or more frequently by slave-dealers, to train as female slaves or prostitutes. In the dialogue by Terence, to which we have alluded, the father (Chremes) while reproaching the mother for not killing the child, says, "What did you propose to do? What did you desire? Consider, you would have abandoned your daughter to that old witch! That is clear enough. To make her, by your help, a slave or a prostitute!"[1]

The exposure in Rome was commonly made by night, near the Lactarian column, and in the Velabrum, a parish or district in the city, near Mount Aventine. Though the father often designed the death of the infant, yet some benevolent persons now and then rescued a child, who became afterwards distinguished. Several instances of

[1] Quam bene viro abste prospectum est? quid voluisti? cogita!
Nempe anni illi prodita abste filia est planissime;
Per te veluti quæstum faceret, velubi veniret palam.

this are given by classic historians. Quintilian calls on his readers to imagine the pitiable fate of the abandoned child, exposed to birds of prey and wild beasts;[1] and Juvenal pictures the fine lady of the day going to the Velabrum, to find some infant whom she can substitute for her own,—in vain expected,—and thus secure some inheritance.[2]

With this practice was intimately connected the custom of destroying life in its germ, which was so common in Roman wealthy society. We need not adduce proofs of this well-known crime.

It is not to be supposed that the instinct of humanity before Christianity was utterly silent as to these cruel or pernicious habits and practices. A Stoical jurist, Julius Paulus, in the time of the Emperor Severus (222–225 A.D.), though he could not directly say that these offences were contrary to law, yet ventured to pronounce the mother who destroyed life in the womb, or who refused nourishment, or exposed her offspring in public places, as equally guilty of murder.[3]

The Stoical philosophers, rhetoricians, historians, and even the poets, pleaded or declaimed incessantly against these crimes. They knew the right. Yet here, as in so many other instances in antiquity, there was a fatal want of power to carry out the good instincts into practical action. The overwhelming poverty of the empire led the poor incessantly to these offences, and the rich had found no sufficient impulse in the maxims of Stoicism to resist the

[1] Vos ponite ante oculos puerum statim neglectum; cui mori domi expediret, inde nudum corpus, sub cœlo, inter feras et volucres. (*Dec.*, 306.)

[2] *Sat.*, vi. 605.

[3] Necare videtur non tantum is qui partum perfocat, sed is qui abjecit et qui alimonia denegat, et is qui p blicis locis, misericordiæ causâ, exponit, quam ipse non habet.

enticements of a selfish cruelty. Some of the more humane of the Roman emperors, as we have described elsewhere, attempted to cure these evils, by founding charities for abandoned and destitute children. It was all however in vain. Exposure and child murder and the sale of children increased. Nor did the Stoical philosophy seem to exert much more influence on legislation than on practical morals. There was indeed under Severus a law passed which secured the liberty of a child sold by its father from reasons of poverty; another act punished with banishment the creditor who would receive children as security for debt, before ascertaining whether they were free or not. The Emperor Diocletian renewed the edicts of Severus, and took away from the father all right of giving, selling, or pledging his children.

When the peculiar power of Christianity began to work in the Roman empire, it tended, of course, in every way to eradicate these horrible evils. Nothing could be further from its spirit than such enormities. Human life everywhere was profoundly sacred to it, and the Church began immediately to protect and shelter unfortunate children. The Christian Fathers, whose influence in some directions is by no means admirable, in this were consistent with the teachings of their great Leader and the Founder of their Faith. They struggled incessantly against the exposure of children. "We have renounced," says one,[1] "your bloody spectacles, believing that there is no difference between regarding a murder and committing it. We hold for homicides the women who commit abortion, and we think that to expose a child is to kill him." "One meets," says another,[2] "among all nations only children destined for the most horrible purposes, and who are nourished like troops of animals; you raise a tribute on these children.'

[1] *Athenag. Apol.* [2] *Justin. Apol.*

"The wicked alone can expose his children; for us, this impiety only inspires horror: first, because the most of these unfortunate little ones are destined for debauch; then, because we would fear the accusation of murder if they should die." Clement says, "Man is more cruel to his offspring than animals." Tertullian's appeal is well known.

Felix speaks of children exposed to wild beasts and birds, and of these crimes as exceeding the worst of ancient times, Lactantius, after an eloquent passage, says, "These parricides allege their extreme poverty and the impossibility of raising their families." . . . "They have educated their own blood for slavery or the brothel."[1] Basil (381 A.D.) preaches against the spectacle of free children sold by creditors in the market, and those who expose them from reasons of poverty.[2]

Justin pours forth indignation at those who expose their offspring, and thus suffer both girls and boys to be brought up for the basest purposes.[3]

It is unnecessary to give more instances of the unceasing protests of humanity, addressed by the early Fathers against this cruel practice.

The great obstacle to reform, however, was the profound and terrible pauperism of the Roman empire. When, under Constantine, the spirit of Christianity began to affect Roman legislation on this subject, there came up always the practical difficulty—What shall be done with the exposed child? He will only be preserved from death by

[1] Addixit certe sanguinem suum vel ad servitutem vel ad lupanar. (L. C. Lact., *De vero cultu*, lib. vi.)

[2] Qui prætextu ad paupertate quæsito suos infantes exponunt. (*Homel.*)

[3] Quia videmus . . . ad stupra non puellas solum, sed etiam masculos produci . . . , pueros ad turpes usus, etc. (*Apol.*, 1, c. 27.)

those who would make a slave of him. To forbid such slavery may only increase the evils of exposure. These difficulties constantly modified legislation on this evil. Constantine, in the year 315, was obliged to put forth the following proclamation: "Let a law be at once promulgated in all the towns of Italy, to turn parents from using a parricidal hand on their new-born children, and to dispose their hearts to the best sentiments. Watch with care over this, that, if a father bring his child, saying, that he cannot support it, one should supply him without delay with food and clothing; for the cares of the new born suffer no delay, and we order that our revenue, as well as our treasure, aid in this expense." And again in 321: "We have learned that the inhabitants of provinces, suffering from scarcity of food, sell and put in pledge their children. We command then that those found in this situation, without any personal resource, and only being able with great trouble to support their children, be succoured by our treasury before they fall under the blows of poverty; for it is repugnant to our morals that any one under our empire should be pushed by hunger to commit a crime." [1]

Constantine was subsequently (331) obliged, in view of the increasing calamities of the empire, to enact a law that any one "taking up" an exposed infant had the power to adopt him as a child, or to keep him as a slave, and the natural father had no right to reclaim him. He was however permitted to obtain his child again, if he paid the full price, or replaced him by another slave.

Valentinian (366) proclaimed to the empire the duty of parents supporting their children, and threatened punishment for the crime of exposure; but the unnatural parent was not permitted "to claim as his, whom he had led to death." The sale of the children of the poor was not

[1] *Cod. Theod.*, xi. tit. 27.

absolutely forbidden (from motives of humanity), but if reclaimed, parents were to pay the full price and one-fifth in addition.

The Christian councils, which set themselves firmly against the crime, as well as the Christian emperors and law-givers, were obliged through the fourth, fifth, and sixth centuries to leave children to become slaves to save them, as the phrase was, "from the teeth of dogs." The councils repeatedly exhorted the faithful to collect abandoned children, and to hold them either in adoption or servitude.

As early as 325, the Council of Nice ordered the foundation of hospitals in the principal towns, some of which would no doubt shelter the foundlings. The Council of Vaison (442) established rules as to the receiving and taking care of abandoned little ones. Whoever shall find one, shall bring him to the church, where the fact shall be formally certified. The following Lord's Day, the clergyman shall announce to the faithful, that a new born has been found, and ten days' time will be granted to the parents to recognize and reclaim him. When these formalities had been fulfilled, if any one reclaimed a child or calumniated him who received it, he was punished with severe ecclesiastical penalties.[1] No council, however, ventured to proclaim the emancipation of the abandoned little ones.

The full effect of the new Faith upon legislation on this matter was not seen however before the reign of Justinian. This emperor (529–534) took the humane ground that the abandoned infant, even if a slave, became free by the act; and that if it were found, it became the property neither of the finder nor of the parent who had exposed it; the law recognized in such children the power of ac-

[1] *Acta Conc. Concil. Vas.* (ix. 1), *De Expositis*, etc.

quiring property for themselves and of disposing of it in favour of their own descendants.[1]

In 533, the emperor, finding how little legislation was lessening this fearful evil, proclaimed as the height of cruelty the depriving such unfortunate children of their liberty, and threatened the authors of the crime with the severest penalties. He announced again that all infants exposed near churches or in other places, became free by this act,[2] and declared anew that no right of reclaiming existed over these unfortunate beings. The famous Code made the act of exposure as much more cruel than murder, as it strikes beings more feeble and worthy of pity. The Novellæ[3] speak of the crime as one alien to human feeling and which even barbarians could not commit.

In 553, Justinian invited the Archbishop and Prefect of Thessalonica to give to exposed infants all the assistance possible, while threatening a severe fine on all who disobeyed.[4] The law, however, still allowed the father, in extreme distress, to sell his child at the moment of birth, and permitted the purchaser to retain it in service.

Houses of mercy for children were founded also by Justinian. The churches and Church charities became refuges for this unfortunate class. Christian charity attempted to alleviate the great evil which law could not correct or the usual spirit of humanity prevent. A marble vessel was provided for exposed infants at the door of

[1] Sancimus nemini licere, sive ab ingenuis genitoribus puer parvulus procreatus, sive a libertinâ progenie, sive servili conditione maculatus, expositus sit, enim puerum in suum dominum indicare.

[2] Sancimus ut quosque vel in ecclesiis vel in vicis vel aliis locis abjectos constiterit, modis omnibus liberi sint. (*Cod. Just.*, lib. xii.)

[3] Crimen a sensu humano alienum, et quod ne ab ullis quidem barbaris admitti credibile est. (*Nov.*, iii.)

[4] *Nov.*, ix. 38.

each church. In a later age, this simple provision of humanity was imitated in a manner which produced great evils, in the well-known "turning-slide" (*tour*) of French asylums for foundlings. In that time of cruelty and hardness, however, the church receptacle was for these infants the alternative to "servitas aut lupanar," the slave's chain or the brothel.

The servants of the Church (matricularii) or the clergyman received the infant, and drew up a legal form, certifying to abandonment. The latter then enquired, in the religious meeting of the faithful, if any would take charge of the infant. All these formalities must receive the sanction of the archbishop. Often a family was found who would consent to adopt the orphan, or, if not, the Church took charge of him. In some of the towns, the new born thus abandoned was exposed at the doors of the church by order of the archbishop, during ten days.[1] If any one recognized the babe, or could designate the parents, he was bound to inform the ecclesiastical authorities. The nurses (nutricarii) who had charge of the infant received a formal and legal paper, in which their own compensation was fixed, and the circumstances of the exposure were stated, and their right recognized of holding, if necessary, the child as a slave.

The churches generally held among their serfs the new born thus found and supported. Many churches had orphan or foundling refuges connected with them.

In the eighth century, the evil in Europe was at an extreme point; the poor sold their offspring, and great numbers of children perished. In the Gauls, as well as Germany, Italy, and England, needy peasants openly offered their children for sale. Many of the saints are

[1] *Hist. des Enfants trouvés*, par J. F. Terme et J. B. Monfalçon. Paris, 1840.

related to have been thus sold. In the British Islands, the traffic became an object of a special mission by Pope Gregory, who sought to abolish it. "Our Divine Redeemer," says this pontiff, "in making Himself man, has delivered us all from servitude, and has restored us to our primeval liberty. Let us imitate His example, in freeing from slavery the men who are free by the laws of nature."[1]

As we have related elsewhere, Christian charity early began efforts to relieve these great evils, by the foundation of refuges and orphan-asylums. There is an indication of one as early as the fifth century in Trêves;[2] and another was founded in 787, by Archbishop Datheus, at Milan, whose words are thus reported: "I desire that as soon as an infant shall be exposed in church, he be received by the superintendent of the hospital, and entrusted to the care of nurses employed for this purpose. These children are to learn a trade, and when they have arrived at the age of eight years, I desire that they be freed from all servitude, and be at liberty to go and dwell where they please."[3]

Several asylums are mentioned in the eighth century in different portions of Europe; some created by individuals, and others founded by royal authority. Still others are spoken of in Italy in the fourteenth century. From these has sprung the long list of Christian charities for children in all civilized countries; asylums, refuges, *crêches*, infant and industrial schools, reformatory institutions and aid societies without number, caring for the orphan, the blind, the deaf and dumb, the crippled and defective, the foundling and

[1] *Greg. op.*, Ep. xii. l. vi. 16.

[2] *Terme et Monfalçon.*

[3] Quoted in *Hist. des Enfans Trouvés*, Terme et Monfalçon. also *Muratori.*

Volo atque statuo, ut cum tales feminæ, quæ instigante adversario ex adultero acceperint et parturierint, etc. Muratori, *Ant. Ital.*, 3, 558.

outcast. Christ especially showed his feeling for the child; and Christianity, following His teachings, has always set the utmost value on the person and well-being of children, which, indeed, is but the natural fruit of the whole tendency of this religion. Probably, of all practical changes which Christianity has encouraged or commenced in the history of the world, this respect and value for children is the most important, as it affects the foundation of all society and government, and influences a far distant future.

CHAPTER VIII.

HUMANITY IN ROMAN LAW.

WE refer continually to Constantine's legislation, not because this emperor could be considered a Christian convert, but because now, for the first time, Christianity was openly influencing Roman jurists. A brief review of some of the humane legislation of Constantine will show the working of the new system of morals. A law (312 A.D.) exempted Christian ministers from municipal charges, even as the pagan priests had been, thus putting the officials of the new religion on an equality with those of the old. An edict at Milan (313) granted liberty of conscience to Christians and worshippers under all other religions. In the same year emancipation was permitted in a Christian church. In 321 legacies were allowed to religious houses; succour was sent to the African clergy, and the general observance of Sunday was prescribed. The panegyrics on Constantine spoke of his laws, as especially established for the control of morals and breaking the power of vices.[1] His biographer expressly says that he desired to conform his legislation to the spirit of Christianity, and in this view he endeavoured to break down the old legislation which had oppressed the weak. It was with this purpose that he conferred upon the archbishops

[1] Novæ leges regendis moribus et frangendis vitiis constitutæ. (*Paneg. Con.*, c. 38.)

the legal right to protect the weak and become arbiters in civil cases, which, in an age of such cruelty and oppression, was often a great means of protection to the poorer classes. In fact this practice was the beginning of the system of arbitration (*Austräge*), which in the Middle Ages became so important an influence in rescuing society in Germany from "private war" and anarchy. The custom itself dates from the habit of the early Christians, taught by the Apostles, of deciding their disputes by arbiters chosen among themselves.

An act (325) asserts the right of all the inhabitants of the empire to have recourse to the courts of justice, and the duty of all judges and magistrates to exercise strict impartiality. All were held equal before the law. Another (331) protests against the venality so common throughout the administration. "Let the rapacious hands of officials cease from their plunder—cease, I say!"[1] In 334, it was proclaimed that widows and orphans, the weak and the poor, cannot be forced before a tribunal of their own province (where influence and wealth might oppress them), but can appeal to the emperor. In 365, Valentinian I. freed widows from the tax laid on the common people, and exempted orphans up to the age of 20, and female orphans till they were married.

The first laws upon the observance of Sunday are especially in the interest of the working-classes, and clearly manifest the influence of the new ideas in the Roman world. Thus one (321) forbade other labours than those of the fields on Sunday, and all civil public acts, except emancipation. Soldiers, too, were allowed the privilege of assisting at divine worship on that day.

[1] Cessent jam nunc rapaces officialium manus, cessent inquam! *Cod. Theod.*, l i. tit. 72, 4. *Cod. Just.*, lib. iii. tit. 12, 2, 3. *Cod Theod.*, lib. ii. tit. 8. 2, 1. *Cod. Just.*, lib. ii. tit. 58, 2, 1.

If we reflect on the condition of Roman slaves and all labourers at that period, how incessant and wasting the toil, and what sacrifice of human life was the result, we shall appreciate the humanity of the first "Sunday Laws."

A law of Emperor Leo says: "On the Lord's Day, eternally worthy of honour and of veneration, let no act of legal procedure be done; let no debtor receive a summons, let no pleadings be heard, let there be no process, let the hard voice of the public crier be silent, let the pleaders see their discussions interrupted, and enjoy a moment of truce; let adversaries agree and repentance enter into their soul. We make, then, this day a day of repose, but we do not wish that obscene pleasures should fill it. On Sunday, let all theatrical representations, and races in the amphitheatre, and lamentable combats of wild beasts, be suspended; and if the solemnity of our birth or coronation fall on that day, let the celebration be deferred." [1]

The new spirit touched even the forms of law. In A.D. 342, the enactments said boldly, "Let the formulæ of ancient law, those captious syllables which are nets for good faith, disappear completely from all acts."

No classic legislator, so far as we can recall, had ever cared for that often unfortunate class—the prisoners. Many were merely confined as witnesses, many on false accusations, and all demanded, at least, common humanity in their public treatment.

The prison reform of succeeding centuries began under Constantine's reign. Those accused of crimes are to be examined with all diligence, and those arrested must be confined in a humane manner. The cells must have air and light. Persons under accusations are not to be put in jails, or scourged, but are to be placed under "military

[1] *Code*, iii. 411, 11.

arrest," and in a prison open to the light.[1] A law in 314 forbade the judges to inflict capital punishment without the confession of the accused, or sworn testimony of the accusers. The new moral power in the world seemed to give a fresh dignity to the human countenance, as having been borne by Him who was the Son of God, and who had died for men. "Let those who are condemned," says a writing of Constantine (318), "whether to gladiatorial games or to the mines, not be branded on the forehead, that the majesty of the face formed in the image of celestial beauty be not dishonoured." [3] In 340, a law forbade the mingling of sexes in prison; and another was enacted protecting the modesty of Christian virgins against traffickers in prostitution.[4] Honorius [5] charged the judges to visit the prisons every Sunday to see that the prisoners received sufficient nourishment, and to guard lest the proper humanity be not shown the convicts by corrupt jailors. The sentiment of humanity reached even the rights over material things, and in Justinian's Code the following beautiful passage occurs in regard to selling the home of a minor:—

"It shall not be lawful to sell the home in which the father has died and the youth grown up; in which either to see the statues of ancestors not placed or overthrown is melancholy indeed." [6]

Such a provision as the following, though made for a

[1] *Cod. Theod.*, lib. ix. tit. 5.
[2] *Ibid.*, lib. ix. tit. 40, 21, 2.
[3] *Ibid.*, lib. xv. tit. 8, 21.
[4] *Ibid.*, lib. xv. tit. 8, 1.
[5] Ne his humanitas clausis per corruptos carcerum custodes negetur. (*Ibid.*, lib. x. tit. 3, 27.)
[6] Nec vero domum vendere liceat, in qua defecit pater, minor crevit; in qua, majorum imagines, aut non videre fixas aut revulsas, videre, satis est lugubre. (*Cod.*, ix. tit. 37.)

personal object by the emperor, breathed the new spirit in the Roman world. By the severe old Papinian law, if a free man should marry a woman who had been a slave though now a freed woman, and should afterwards chance to be elevated to the senatorial dignity, the marriage was thereby dissolved. The law of the codifiers, full of the new humanity, says: "We then, following the judgment of God, do not suffer the good fortune of the husband to become the calamity of the wife. Far from our times be any severity of this kind!" and it is enacted that such a marriage is good.[1]

The deep enthusiasm of humanity working throughout the Roman world under the new impulse, finds its fitting expression in these mild provisions of the Roman law. The personality of the Jewish teacher is felt by students labouring in their closets in codifying or improving legislation for the empire, and the dry details of law bear the stamp upon them of Him who held all men as children of a common Father, and believed in overcoming evil with good.

These are interesting as the first traces of the *Gesta Christi* in European legislation; they herald a long history of humane victories.

Opposition to War by Christians in the Roman Period.—It need scarcely be said that the spirit of Christ's teachings is opposed to war, and, above all, to wars of vengeance or conquest. But this is one of those points in which He was so much in advance not only of His own times, but of all succeeding ages, that His followers have only been able to make a kind of compromise between His principles and the ideas of the time. They have often excused only defensive wars, or service given on compul-

[1] Nos igitur Dei sequentes judicium, etc. Absit a nostro tempore, hujusmodi asperitas! (*Cod.*, lib. v. tit. 4.)

sion, or they have sought to mitigate the horrors of war, or to prevent it by arbitration. The habits of arbitration in private matters were very early implanted among believers by the words of Jesus (Matt. xviii. 15–17) and the apostles (1 Cor. vi. 4–7). But the early followers, being under the more immediate inspiration of the Master, went much farther, and great numbers seem to have refused entirely to serve as soldiers, or to join in any war whatever. The phrase is often repeated by the earlier Fathers, that "Jesus in disarming Peter disarmed all soldiers."

An anecdote is related of a certain Christian, Maximilian by name, who was brought before a Roman tribunal to be enrolled as a soldier in one of the legions of Rome. On the proconsul asking his name, he replied: "I am a Christian—I cannot fight!" He was enrolled, but still refused to fight. He was told that he must either serve or die. He again replied, "I am a Christian! I cannot fight, even if I die!" whereupon he was executed.[1] Another instance is given of a centurion named Marcellus, in the legion of "Trajan." He became a Christian, and believing war not permitted by his faith, he threw down his belt before his legion, and declared that, consistently with his principles, he could not fight. He was sent to prison, but still persisting in his refusal, and his declaration that it was not lawful for a Christian to engage in war, he was put to death. Another officer[2] in the same legion resigned for a similar reason, and was also executed. A number of such instances are recorded, and probably many more have never come down to us.

Many of the early Fathers took the ground that no Christian could lawfully be a soldier or engage in a war.

[1] *Acts of Ruinart*, quoted by Dymond, *Essays on Principles of Morality*, p. 418.

[2] *Dymond*, p. 418.

Justin Martyr and Tatian speak of soldiers and Christians as distinct characters, and Tatian says that Christians decline military commands. Clemens calls Christians "followers of peace," and says they use no implements of war. Lactantius states repeatedly that it can never be lawful for a righteous man to go to war.[1] Tertullian argues against it in "De Corona" (c. xi.), and states that in a large portion of the Roman armies, embracing more than one-third of the best legions, not a Christian is to be found. In another passage, speaking of the prophecy of Isaiah as to universal peace, he adds:[2] "You must confess that the prophecy of Isaiah is accomplished, as far as the practice of every individual is concerned to whom it is applicable." He calls Christians "priests of peace." Irenæus says, "Christians have turned swords and spears into pruning-hooks, and know not how to fight." Justin Martyr declares that "the prophecy of Isaiah is fulfilled, you have reason to know; for we, who in times past killed one another, do not now fight with our enemies.[3]

One of the accusations against Christians was that they refused to serve in the Roman armies. Origen, in answering this reproach from Celsus, says (Apol., i. 6): "To those unbelievers who would force us to fight for the commonwealth, to destroy human beings, we would answer: That even their own idol-priests, and those who attend upon the service of their reputed gods, do keep themselves unstained with human blood, that so they may offer sacrifices for the whole nation with clean and unpolluted hands. Neither, in case war should arise, are

[1] Ita neque militare justo licebit. (*Div. Inst.*, lib. xi.)

[2] *Dymond*, p. 418.

[3] Quoted by Dymond; but see Justin, *Dialog. cum. Tryph. Apol.*, 2. *Tertull.*, *Apol.*, c. 21 and 37. *Origen con. Celsum*, 3, 5, 8. *Cypr. Epist.*, 56. *Athan. Cyrill.* etc.

these men to be enlisted in their armies. And if this be done without reason, how much more may they be said after their manner to fight, who, being priests to the most high God, endeavour to preserve themselves free from blood and rapine; that so, while others are polluted with spoil and slaughter, they may wrestle with God Himself, by constant and incessant prayer, for the welfare of them that make war justly, and for the safety of them that govern righteously."

Le Blant, in his investigation of Christian inscriptions, mentions that among 10,050 Pagan inscriptions which he had examined, 545 were those over the bodies of soldiers, while in 4,734 Christian inscriptions only twenty-seven were memorials of military men.[1]

Dymond states, that for two hundred years not a Christian soldier is on record in the Roman armies; and that only in the third century, when Christianity was more corrupted, they began to be enrolled.

This may be an exaggeration; for we know that some of the most influential of the Fathers, as Augustine[2] for instance, defended military service and did not object to a Christian's enlisting in a "righteous war." Then, much of the objection on the part of the believers was more to the idolatrous practices connected with the Roman military service than to the shedding of blood itself. Still it all shows that the first unconscious drift of the early Christian teachings was against war, or any participation in it. This did not indeed become a reality in Christian life in later ages, for

[1] *Inscr. Chrét. de la Gaule*, p. 81.

[2] Yet Augustine was a lover of peace, as were all the Fathers. "What shall I say of peace or of praise of peace till we arrive at that country of peace? There we shall be able to praise it, where we more fully possess it. Jerusalem is the vision of peace, and all who possess and love peace, are blessed there for evermore.'" (*Tract. in Ps.* cx. 57.)

Christians have supported war in every century, yet it prepared the way for the efforts for peace and arbitration in the Middle Ages which we shall detail later,—for the modern efforts to mitigate the evils of war and to prevent it by arbitration,—and for the higher efforts of the followers of the Prince of Peace, sure to come, to put an end to war on the earth, and bring on universal peace.

CHAPTER IX.

DISTRIBUTION OF PROPERTY.

THERE will be diverse difficulties in examining the direction and effect of Christ's teachings on the distribution of property. We are not to define Oriental and half-poetic expressions as we would similar phrases in a Western and more prosaic narrative; and on the other hand, we should not interpret Christ's words solely by the practice of his later followers and by the ideas of a modern and industrial age. It is not to be assumed, as is done by most writers on this subject, that the modern form of the distribution of wealth is the final and perfect one, and that society as it is now is substantially what it must be in all coming ages, or what our Lord contemplated in his future "Kingdom of Heaven," or regenerated society of all men. A Christian writer in the early Middle Age would have had equal right to assume that society must always be made up of landlords owning vast tracts of country, who protected their vassals, of large bodies of military followers, and of serfs bound to the soil, or that justice in regard to quarrels over property and land must always be decided the judicial duel. Both conditions were not directly touched upon by the teachings of the great Reformer, yet the principles He taught must gradually undermine both. The feudal system belonged to a stage of human progress. The modern industrial and commercial system may be equally one phase in the gradual change or advance of

mankind. At all events, it is not the ideal or perfect system. A condition of society in which enormous masses of human beings are born to an almost inevitable lot of squalor, penury and ignorance, and still other multitudes to incessant labour with few alleviations or enjoyments, while another considerable class, with little or no effort of their own, have all the blessings of life and transmit them to others,—or an industrial system which leaves to the few who are gifted with the brains or enjoy the fortune to lead industrial enterprizes the power to reap the benefits of labour, while the many who toil, only gain a bare pittance, —a society which presents on one side, enormous fortunes and endless accumulations of wealth, while on the other, it offers classes ground down by poverty and pinched with want, is certainly not the Christian ideal of society or any approach to the "Kingdom of God" on earth.

The great moral progress of the future of the race will plainly be toward some form of a more equable distribution of the proceeds of labour. What form this will take is as impossible to predict, as would have been for a citizen of the Roman empire at the time of Tacitus to predict the present condition of Europe.

If we read Christ's teachings with perfect candour, and as far removed from modern habits of thought as possible, we discover a continual tendency towards exalting poverty, humbling wealth, and equalizing the conditions of life. Leaving out of view the fact that Christ and His disciples lived in almost an atmosphere of agrarianism, or at least of inalienability of family property in land, under the Jewish land-system,[1] and also the natural freedom from all burdens of property which the teacher of a new faith

[1] How far this was a practical feature of Jewish economy at the time of Christ, is, of course, difficult to say. The ideal was in the law, and must have influenced the minds of the reformers of Judæa.

might well inculcate in a climate such as that of Syria; still, there is even then a certain tone throughout the gospels, if not of "communism," at least in favour of greater distribution of wealth than would suit modern ideas. Christ and the apostles warn incessantly against accumulation of wealth. They almost denounce the rich; they praise and commend the poor; their sympathies are strongly with the working classes; they urge continually the diffusion of property, in whatever way would benefit the world; they warn those who do not scatter their acquisitions among the needy; they leave the impression everywhere, that a greater equalizing of human goods, a moderate acquisition, and a raising up from poverty is what is demanded. The parable of Lazarus has been too often interpreted under modern conditions, and it may well be that some explanatory features given by Christ are omitted by the historian; but its literal interpretation plainly contains a plea against the great inequalities of fortune in this world.

Nothing, however, in Christ's teachings tends towards any forcible interfering with rights of property, or encourages dependence on others. As we have so often said, He seldom concerns Himself with human institutions. He would not interfere with property any more than He would with government. And, as we shall show, in presenting His influence on the charity of the world, neither He nor His apostles ever taught idleness or dependence. On the contrary, they enforced the lesson of industry by word and example; and the very foundation of the new character, stamped by Christ, contained those features of dignity and true manhood which have lain at the basis of all real independence and liberty ever since, Neither the idleness of socialism or monasticism nor the weakness of pauperism finds any support in the gospels.

The especial methods by which our Lord would resist accumulation, are by inculcating the absolute duty of giving and of sharing means with others who are less fortunate, and by withdrawing the mind from the excessive greed for money. In many cases, the entire giving up of property for the good of others is made the test of discipleship.

The early "communism" of the apostles is an evidence how deeply these instructions penetrated; but nothing in the words of Christ or His disciples shows that they set forth this as a model for the future. Their great principles were, not to hunger for riches, to be content with moderate means, and if wealth came, to hold it rigidly as a trust for the good of humanity. These principles would certainly tend towards equalization of property.

Charity.—One great means of equalizing human conditions was evidently to be through benefaction and charity. Those who had were to give to those who had not. This, however, did not arise under Christ's system so much from a desire of setting right the distribution of wealth, as from the great underlying principle of His whole teachings, that the individual and society were to be renewed by love to God, and to man through Him. The world never needed charity and compassion as it did in the centuries just following Christ. The irresponsible and despotic authority of Rome had stripped some of the richest provinces of the ancient world of every vestige of wealth for the sake of adding to the incredible extravagance and display of the imperial court and city. The system of taxation in distant communities was like that in the states of European Turkey in this century. It soon left nothing to the unfortunate peasants, and mortgaged their harvests years before. Nor did the taxes always reach the imperial exactor. Knavish tax-gatherers, peculating officials and

local "rings," plundered the money which was wrung from the half-starved farmers. There was no science, order or justice in Roman systems of taxation. Incessant wars and conquests added to the misery of the labouring classes; and slavery, as we have shown, depressed the industry and wasted the means of the whole empire. Vast masses of *proletaires* were gathered in the cities, especially in the imperial capital; and poverty, orphanage, abandonment of children, with wide-spread pauperism prevailed, as they have scarcely ever been known in the history of the world.

But it must not be supposed that there were no efforts of compassion to alleviate these evils before the first proclamation of Christian charity. The sympathies of humanity have been felt in every age and by every race, even if in a feeble degree. In ancient Rome, men always acknowledged a certain duty in giving alms to beggars and in relieving extreme distress, though infant misery seems to have excited comparatively little compassion.

Still, anything like the modern sentiment or conviction, born of Christianity, of the obligation resting upon each man of doing all in his power to wisely relieve human misery; and the wide-spread, thorough, conscientious benefactions by individuals, so common in modern days, were things almost unknown in the ancient world.

Nor were the efforts of the imperial government for the poor, true charities. It depended to a certain degree on the favour of the crowd, and therefore food was supplied indiscriminately to all the hungry and idle who poured into the capital. In Cicero's time, it is estimated that about 12 per cent. of the whole population, and in the year 683 of the Republic, 33 per cent. were supported at public expense.[1]

[1] Naudet, *Mem. sur les secours publics chez les Romains.*

It is related that Cæsar found 320,000 persons, or nearly three-quarters of the whole population of the city, on the roll of public succour; five *modii* of bread (or about 56 lbs.) were distributed to each person per month. Under Augustus, there were 200,000 persons in Rome receiving "out-door relief" from the authorities; this was continued to the reign of Septimius Severus, who added a ration of oil to the alms thus given. Valentinian the Elder ordered a gratuituous distribution of white bread to each citizen;[1] 80,000 modii were distributed per day in Constantinople, and an increase of 125,000 modii per day was made by Constans. Constantine, who desired to have as many houses built in the new capital as possible, allotted bread according to the houses, not to the number of persons. Some of the emperors appropriated large amounts of money to keeping down the price of bread in the capital, while others taxed the provinces heavily in order to make provisions cheap in the metropolis. The effects of such a vicious system of charity can easily be inferred. The idle and improvident of all countries were attracted to Rome to enjoy this "out-door relief;" the industrious were discouraged, those who produced the wealth burdened, and the working-classes were led to depend on the government for everything, while the government lived in fear of them. There was no spirit of true compassion in it, and no wise economy. The masses supported a tyranny and received bread and shows. The real workers were despoiled. But there were other indirect methods of distributing property under the Republic and Empire. Such articles as salt were furnished gratuitously to the people; patrons supported their clients; "stay-laws" were passed to prevent the collection of debts; agrarian laws furnished, like the American public-land laws, free home-

[1] *C. Theod.*, xiv. 17, 5 and 16, 2; xi. 24, 2.

steads to the landless, on conquered or public territory. Cæsar bought lands to be distributed among the poor. The vicious system of public distribution of bread or grain among the people was not abandoned till the seventh century after Christ.

There even existed some forms of public assistance in harmony with modern ideas. Aristotle had the wisdom to say that the best way to relieve poverty was to prevent it, by giving means to buy a little piece of land or by a loan to found a trade. Mutual assistance or insurance societies seem to have existed in Greece, and are spoken of by Pliny[1] in Trajan's time, as formed for "making poverty more endurable."[2] Before this time, the emperors had seen with anxiety the constant diminution of population, especially shown in the lessening number of children in the empire. Augustus attempted to encourage the increase of children by well-known laws, and it is related that on his travels through Italy, he was in the habit of bestowing an allowance (congiarium) of 400 sesterces[3] on any one whom the authorities could prove to have supported a family; subsequently, children over eleven years of age were made participators in these bounties.

The Emperor Nerva left benefactions to encourage the increase of children. Trajan, in 100 A.D., supported 5,000 destitute or orphan children at public expense, and increased the number every year. Money was invested by him for this purpose in land and farms at Veleia, Cisalpine Gaul, which appears to have paid about 5 per cent. interest. In this particular school or asylum, there were 263 boys and 33 girls; in some villages poor children were supported in their homes by the emperor, while municipalities maintained others.

[1] *Pliny*, Ep. x. 93, 94.
[2] Ad sustinendum tenuorum inopiam.
[3] About £8 or $41.

Pliny endowed a charity for the children of the poor; while the emperors Adrian, Antoninus, and M. Aurelius founded or continued benefactions of a like character.[1]

Charitable bequests are occasionally alluded to in the burial inscriptions. Thus a citizen of Atona bequeathed to his native town a sum equal to £3,200 or $16,000; a lady of rank, "in memory of her son," gives to Terracina £8000 or $40,000 to establish a charity; and various smaller bequests for benevolent purposes are mentioned.[2]

One of the nearest approaches to the charitable associations of the Christian world, were the curious *collegia* of the Roman empire in the first and second centuries. The history of these has been especially brought forward through the burial inscriptions[3] recently deciphered.

They seem to have been a kind of social clubs or masonic associations, where all were equal, where fraternal meals were common, and monthly payments prepared a fund for sepulture, for common festivals, and sometimes for ornamental buildings. They formed a natural prototype for the Christian Churches and their charitable societies; but, so far as can be ascertained, they did not use their funds for the poor. They cultivated the habit of equality, and the fraternal spirit, but they did not feel or express "the enthusiasm of humanity," and therefore died out, or were converted into Christian societies. Yet the ideal was sometimes there, as in one beautiful inscription on a woman's tomb, who is pictured as "the mother of all human beings, ready to help all, and who had made the life of no one sad."[4]

[1] *Sen. de Rhet.*, 71, 72, 75, 77, 79, 115.

[2] Orelli and Mommsen, quoted in Boissier, *La Religion Romaine*, 2, 191, and 2, 3, v. 4.

[3] De Rossi, *La Roma sott. Christ.*

[4] Omnium hominum parens, omnibus subveniens, tristem fecit neminem.

But few, however, of such institutions existed in the pre-Christian period. The great masses suffering poverty and orphanage in the Roman empire remained almost untouched by any influence of compassion or any effort of relief.

With Christianity began the organized and individual charity of modern Europe, which for these eighteen centuries has wiped away so many tears, softened so much suffering, saved so many young lives from misery and sin, ministered at so many death-beds, made the solitary evening of life sweet to so many forsaken ones, and the morning glad to so many who would have been born to sorrow and shame; which in so many countries has cared for the sick, the blind, the deaf, the crippled, the outcast and tempted; the young, the orphan, the foundling, and the aged. Surely, if anything is a fore-gleam of that kingdom of heaven which is yet to shine over the earth, it is the brotherhood of spirit, shown in the charity of the modern world. This is most distinctly the fruit of Christ's teachings. And yet the Master did not lay any extraordinary weight on alms-giving. He simply taught the love of man through love to Himself, that the poorest and lowest of the human race represented Himself, and what was done to them was done to Him. The equal brotherhood of man came forth from His teachings, and all human beings of whatever rank, or under whatever disabilities of misfortune, became of equal value in the eyes of His followers, as being those for whom He lived and in behalf of whom He felt it not unworthy to die. The unfortunate had henceforth around them the halo of the great Sufferer, and a very different place in the sympathies of the new world of Europe.

The Christian Churches became very early centres of charity. Refuges for orphans (orphano-trophiæ) were

formed in connection with them, and hospitals for mothers; many of them maintained free "strangers' rests" (xenodochiæ). The emperor Julian's famous letter to Arsenius, speaks in reproach of the Galilæans supporting not only their own poor, but also those of the Romans.

Valentinian in 364 A.D., in a proclamation, says that the true worship[1] consists in helping the poor and relieving those in necessity, while he charges the bishops to watch over the poor and save them from exactions. Several of the Christian emperors took under their especial protection houses for the orphan and infirm.[2] The Code pronounces it a pious duty to support orphan-asylums.[3]

Justinian's Code speaks of hospitals for mothers.[4]

Churches were constantly enriched by the offerings of Christian charity, in order that they might extend their benefactions; and the clergy were allowed especial privileges, inasmuch as their property was employed for the good of others.[5] This is the beginning of that ecclesiastical endowment and freedom from public burdens, which afterwards became so great a weight upon many European communities. It proves, at least in that age, the fervour of charity under the new influences.

The month of December, which had been the especial month in which gladiatorial games and cruel shows were provided by the rich for the poor in memory of the dead, became the month of offerings for the poor and suffering in memory of Him who had died for all.

The first hospital is said to have been built in Rome at

[1] *Corp. Jur.*, 1, 3, 32.

[2] Verus cultus est adjuvare pauperes (sic) et positos in necessitate. (*Corp. Jur.* 1, 4, 1.)

[3] Pium atque religiosum officium pro tempore orphanotrophos ita peragere convenit. (*Corp. Jur.*, 1, 3.)

[4] *Cod. Theod.*, i. 2, 17, 22.

[5] *Ibid.*, xvi. 2, 10.

the end of the fourth century. A little later, Pulcheria, sister of Theodosius the younger, built and endowed several at Constantinople; they increased under later reigns.[1] The Church councils, by repeated acts of legislation, imposed on the clergy and citizens the obligation of supporting, feeding, and clothing the poor, and these declarations were re-affirmed in every city by the local clergy.

Effects of Charity.—It has been alleged with some apparent justice, that this spirit of Christian charity, which has made modern society so different from ancient, has cultivated dependence, and increased pauperism or that kind of poverty which is without hope or energy.

But it should be remembered that there is nothing in the teachings of Christ or the apostles which favoured indiscriminate alms-giving, or the supporting the poor without labour. "If a man will not work neither shall he eat" is evidently a favourite proverb with the great apostle. He himself laboured with his own hands. The disciples were working people, and Christ, in human relations, belonged to the working-classes. The type of character He stamped on men was the very opposite of the idle and dependent kind; it was earnest, self-controlled, under a deep sense of responsibility, looking continually to Him to whom man should give an account of every word and work, with a conviction of being the child of God, and therefore calling no man master. It was such a character as could not possibly in the long course of ages sustain tyranny, or support even priestly arbitrary rule, or encourage any form of pauperism and dependence. It seems to contain the stuff out of which republicans and lovers of freedom in all ages are made, and from which the most independent and self-relying (because God-relying)

[1] *Cod. Just.*, i. 2, 17, 22.

races are formed. Yet forms of government or laws relating to the management of the poor were the last things which Christ would interfere with.

The excessive and unreasoning alms-giving of European countries, and the monastic associations of the Middle Ages, are not due to the legitimate and logical influence of Christianity. They are a natural re-action from the selfishness of the classic period, and sprang from the fearful economical condition in which Europe found itself at the destruction of the Roman empire. So profound and apparently remediless were the evils of the civilized world, so impossible did it seem then to reach the sources of the universal calamity, that a humane person, and above all, one filled with this new love of God and man might well think he had done enough and the best, in sacrificing all to relieve present human misery. He might be willing to take on him the garb of a servant, and, unlike his Master, merely minister to terrible bodily wants, without regard to what was beyond or to the causes of pauperism and suffering. He could become an alms-distributing monk; or, wearied out with the intense struggle to support life amid a world of suffering and selfishness, it would not be strange that he should join one of the "mutual assistance societies" of those ages, and withdraw to a convent where he could pass his days in quiet labour, peaceful studies, and rapt devotion. The world of the Roman empire seemed perishing; the imperial city was half-destroyed; the monk felt only too happy to belong to the city of God, and to keep his thoughts on the world unseen and eternal.

Christianity cannot be considered directly responsible for monasticism any more than for numerous other vagaries of the human mind since its advent. A very large part of the wealth of the community which before Christ

was devoted to the luxuries of the rich, or was expended in debasing and cruel spectacles, was henceforth mainly distributed among the labouring classes through hospitals, asylums, free-schools, institutions of learning and various charities.

Charity is not the best form of the distribution of the profits of labour, but it is certainly one form. Education, as endowed by individuals or the State, is another and better form. And this began in Europe especially after Christianity, though the efforts of the Arabs in this direction in subsequent ages should never be forgotten.

We do not claim, of course, that the Christian religion in the Roman period solved the problem of ages—the proper distribution of wealth. We only urge that its principles and the words of its Founder tended towards a far more equitable division of property than the world has yet known; that, as its truths more and more control men, there will continually be in some form or other a more equal distribution of the profits of labour, and that something of the just sharing by those who have with those who have not was seen at that period.

The method of distribution will vary with each succeeding age.

CHAPTER X.

RESUMÉ OF REFORMS IN THE ROMAN PERIOD.

THE reforms to be traced in the foregoing chapters show the natural and legitimate influence of the Christian system. Parents are bid by the apostle to respect their children, and under Christ's ideas, the son stands with the father as a common child of God whose rights and claims are to be equally considered before Him. Such a tyranny as that of the Roman *Patria Potestas* could not possibly exist for a long period where society was even feebly touched with the spirit of Christ.

The Stoical spirit of humanity had undoubtedly softened the extreme features of harshness of this rule, but it did not come to an end till the new Faith had reached the legislation of the empire. Equally so with the succession of property. The humane views of the Stoical school had already modified the strict tendencies of the Roman law, but it was only after the new doctrines of brotherhood and justice, taught by the followers of the great Jewish teachers, had touched the imperial legislators, that succession followed the bonds of blood and moved in the channels of true equity.

The power of Christianity on the Roman world was especially the influence of a Person, of a pure and elevated character who claimed to be a supernatural Being in his relations to men and God, and who was the Founder of a new religion. His nature alone, from its purity and elevation, seemed to sweep away unnatural passions from

among men, and both in the Roman empire, and since among all races following Him, unnatural vice—one of the greatest evils of antiquity,—has substantially passed away. His character and teachings naturally checked and finally rooted out such a barbarous cruelty and selfish practice, as the exposure of children by parents; and through His influence began the long series of charities for children and the poor and unhappy, which have come down through the centuries. He was not only in advance of the Roman period, but of all ages since, in teaching the duty of a more equitable distribution of wealth in behalf of the poor, the unfortunate and the labouring classes.

The influence of the great Friend of humanity was especially seen in the Roman empire in checking licentious and cruel sports, so common and so demoralizing among the classic races; and in bringing on a new legislation of beneficence in favour of the outcast woman, the mutilated, the prisoner, and the slave. For the first time the stern and noble features of Roman law took on an unwonted expression of gentle humanity and sweet compassion, under the power of Him who was the brother of the unfortunate and the sinful. The great followers of the Teacher of Galilee became known as the "brothers of the slave," and the Christian religion began its struggle of many centuries with those greatest of human evils—slavery and serfdom. It did not indeed succeed in abolishing them; but the remarkable mitigations of the system in Roman law, and the constant drift towards a condition of liberty, and the increasing emancipation throughout the Roman empire, are plainly fruits of its principles. All these and similar steps of humane progress are the "*Gesta Christi*" and the direct effects of His personal influence on the world.

As to the position of woman, it was the continual reproach of the early enemies of the Christians that they

put woman on so high a position. Women had from the first a strong influence in the Church; the earliest converts from all ranks of society were women, and the example of Christ and the apostles has given the key-note to all modern civilization in the tender respect and dignity thrown around the weaker sex. In this, the Jews of the imperial era only followed out much of the early teachings of the Sacred Book. The picture of the Jewish woman in the last chapter of Proverbs (xxxi. 10–31) might describe the position of a Christian lady with many dependents in the nineteenth century in any civilized portion of America or Europe.

At the period of which we are speaking, the peculiar influence of the German tribes upon the position of woman had not been much felt in the Empire. The "tutelage" of woman existed among them also. There was nothing in the Stoical mode of thought, or in the teachings and example of Stoics, which especially tended to elevate woman. The current opinion in the cultivated classes of the Roman empire, if we may judge from poets, satirists, and fragments of speeches handed down, was of profound contempt for woman in the moral and intellectual aspect. There were of course happy marriages, and many instances of affection for sisters and female relatives or friends, and the annals of Rome presented not a few examples of very heroic and superior women; but, in general, Roman women merited by their conduct and their lack of intelligence in the imperial era, the contempt and censure so freely showered on them by the men.

The change in their legal position and the removal of tutelage, is plainly due to the effects of the new Faith. Their own character rose with the increased respect accorded them in the rising Church. They became the confessors of the Faith under the most brutal and savage

persecutions; their martyrdoms on the cross, in the bloody arena or under frightful tortures, formed the most touching incidents in Christian traditions. The sufferings and death of women in the early ages of the Faith for ever hallowed the sex in the history of the Church.

Marriage, too, under the Christian idea, was a bond of equal union, and the highest spiritual partnership. It recognised the two partners as equal before God, and as of one flesh, even though different offices were assigned to each. The Roman tutelage could not exist long under it. It is true that this idea of marriage existed with the Stoics, but it was seldom realized; and what the Roman practice became, we have seen. Yet the new Faith would not permit the entire freedom and laxity which arose under the Roman "free marriage," any more than it recognised the entire subjection and inferiority of the wife under the ancient Latin marriage. It demanded faithfulness, virtue, and propriety; it urged the indissolubility of marriage, except for unfaithfulness or its moral equivalent; it taught the continuance of the union through endless ages of a coming life. So it happened, that this Faith had a composite influence on the position of woman. It strengthened the marriage tie, and therefore, restrained woman of the great freedom she had been enjoying as a married woman under Roman practice. It gave her on the other hand, greater dignity, both as wife and unmarried, and removed her from under the excessive restraints of the old Roman law. The Church, with its Canon law, has undoubtedly often gone beyond the teachings of its Founder, and subjected the wife to unreasonable legal restraints. But at the period of which we speak, the power of both Religion and Church entered Roman society as a thoroughly purifying and ennobling agency. It did not accomplish, indeed, all that in its nature it was intended to effect;

the Roman habits were too long formed and the influence of both laws and emperors was too weak to eradicate them. Moreover, there comes a period in the history of the decadence of a race when its moral condition is aparently beyond the reach of any system of morality, or of the purest religion.[1] We know that moral changes are wrought out by slow moral means, and that it is possible for a race as for an individual to reach such depths of corruption and weakness as to forbid any reasonable possibility of renovation and restoration.

The Roman race, and many of the races under its sway, had evidently fallen to that stage of degeneracy. They were eaten away by vices and corruption beyond any hope of redemption. Their great historian—the prophet of evil—Tacitus, saw this with singular clearness, and this thought inspires his solemn and sombre eloquence. But he sees no redemption possible. Human affairs seem to him the sport of unseen powers,[2] and final and general ruin the only and probable ending. The poets are full of this melancholy tone. The moralists take refuge in the sublime truths of Stoicism and create an ideal city of virtue which shall take the place of the imperial city, soon to perish. It may be, it was this idea which lay at the bottom of the solemn conviction of the apostles, that the end of all things was at hand: the world of the day was coming to an end; not even the religion of Jesus could save it.

What could preserve European society? The usual

[1] This seems the condition of the Sandwich Islanders at this present time; the race is dying out, and Christian influences do not reach it thoroughly enough to save it. On the other hand, the Fijis, a more savage, but vigorous race, show the genuine action of the Christian Faith. (See Miss Cummings on the Fijis.)

[2] Res humanæ superis ludibrio.

answer has been, the invasion and intermingling of the German and Keltic races. But, as we shall show later, it was not the fresh infusion of barbarian blood alone which could renovate the world. The northern tribes brought indeed a more healthy physical nature into the Roman empire, and purer habits, and characters less enervated by luxury or corrupted by vice. But they had their own vices; they were cruel, revengeful and passionate; certain lusts had made deep inroads in their natures; the paternal tyranny and a tutelage of woman existed among them. Their ideas of justice were much less developed than were those of the Romans; and humanity was scarcely understood by them. Yet from the first, they formed a fruitful soil in which Christianity could work. It is altogether probable that this Faith can more easily plant itself in a wild barbarous nature, with many generous qualities, than in a more cultivated mind, where the pride and vices of luxury have been long growing rankly. Without the Christian influences, the northern barbarians might have either overwhelmed Roman civilization and brought on a night of barbarism, or have been themselves corrupted and destroyed by the vices and sensuality which surrounded them; in either case, they could not have renovated the world. Their influence would perhaps have been like that of the Sclavonians on the Greeks; and no important result for human progress have appeared. The advance of mankind for future ages seemed at that time to depend on two factors: the power of a system of morality supported by supernatural sanctions, or upon Religion; and a fresh race in which this religion was to manifest itself. The Roman and Greek races were in their last stages of degeneracy. Physical evils and weakness of will had been transmitted for generations. Unnatural vices, the sign of final decrepitude, had attacked all classes. Marriage had become a

farce, or the feeblest bond. Exposure of children was practised to an incredible extent. The spirit of cruelty was nourished by every device and encouraged by incessant bloody sports; even human sacrifices were offered at the altars of the gods. Slavery had eaten out the life of the nation and wasted its substance. Owing to forced labour, imperial tyranny, bad finance and wars, an almost immeasurable pauperism covered the empire. The only help possible seemed in utterly breaking up society and introducing fresh blood and new institutions.

A new religion or a system of exalted morality could not penetrate to the heart of Roman society as it then was. It reached certain individuals, who became conspicuous instances to all ages of its power. But it left untouched great masses of men, and therefore many of the evil habits and practices of a sensual past. This was the more true in that the new Faith soon became a State Religion, and therefore was upheld by force and self interest, instead of being left to its own spiritual power. It was professed by multitudes who never felt its converting influences.

What Christianity could do with an old and degenerate race under a State Church, where religion became an externality and faith a matter of government, we see in the dreary history of the Eastern empire. The power of the system never touched the heart of the people. If we except the grand legacy of Roman law, as reformed by Christian influences, left by Justinian and his predecessors, we can hardly point to one blessing transmitted to the world by the nominally Christian empire, whose seat was at Constantinople. The Greek population needed the German blood.

What a fresh barbarian race could accomplish in renovating the world without Christianity, we may see in the

effects of the Turkish conquest on the races of the Greek empire. The Turks had many of the noble savage qualities of the ancient Germans; their faith in some points was purer than the half-idolatrous worship of the Greek masses, and for this reason and others, they did not accept the faith of the conquered races, as did the northern barbarians.

Christianity never mitigated their savagery or purified their passions. Under Mohammedism, Turkey and some of the fairest provinces of the world have been kept out of the march of human progress. Sensuality and unnatural vice are said to prevail as they did in the Roman Empire, and even this century has witnessed cruelties and barbarisms such as were common in Europe before the new Faith appeared.

For the coming triumph of Christianity, or even its partial infusion into European life, there were needed fresh races or peoples, not exposed to Roman corruption, who would receive its teachings gladly. These appeared in the Germanic and Keltic tribes; and their influence, as modified by Christianity, on the moral progress of Europe is now to be examined.

II.

POWER OF THE CHRISTIAN FAITH ON THE HABITS, MORALS, AND LAWS OF THE MIDDLE AGES.

CHAPTER XI.

POSITION OF WOMAN UNDER THE GERMAN TRIBES.

WHEN the German and Keltic tribes first met the influences of the Christian Faith, they had about them something of the wholesome purity, as well as the savageness of the vigorous life in the forests and on the waters. For some unexplained reason, woman held, in the Teutonic tribes, a peculiar and revered position. It is true that she was under the absolute authority of her husband or guardian, and could be sold by the former, or bought or beaten or killed. Yet she was the companion of his labours and dangers;[1] her counsel in moments of great peril was looked upon by the tribe as almost inspired; she was often the prophetess of revealed destinies; she encouraged the men in their fiercest battles, and it was said that, to the soldier despairing and dying, her whisper would bring back life and courage, and often arouse him to victory.[2] Repeatedly in their long struggles with the Romans, have women of the Germans deliberately murdered themselves, rather than submit to dishonour. It may not be reasonable to trust entirely to an epigrammatic satirist like Tacitus, or to a fiery denunciator like Salvian, yet under the comparisons of both there must be some truth. The purity of German women must have

[1] *Tacitus.*
[2] Gidé, *Condition privée de la Femme. Tacitus.*

been a striking contrast with Roman impurity; and according to the "eloquent priest of Marseilles," the virtue of the Gallic Christians made but a poor appearance placed beside this heathen chastity. The Teutons are represented as at first shocked with the abominations they beheld in Roman cities; they destroyed the houses of lust and even slew the women who were instruments of such debasing pleasure. The old sagas show the estimate the early Teutons put on female purity; and the ancient legislation which affixes such severe penalties for even innocent familiarities, and which has scales of penalties for every approach against woman's virtue, prove how early this was embodied in law and custom.

Unlike most barbarous or semi-civilized tribes, the Germans had succeeded in preserving the morals of their women measurably pure. It was this undoubtedly which retained the physical vigour of these tribes, and gave them the bodily force which overwhelmed the degenerate Romans, and which has kept their descendants at the head of the world's affairs even to this day. Yet it will not be wise to exaggerate these qualities. Such writers as Tacitus and Salvian have no doubt painted their virtues in brighter colours in order to throw Roman vice into darker shade. Polygamy was not unknown among them, or unnatural vice.[1] The absolute tyranny of the husband often ended in cruelty and bitter oppression. The provision in certain laws that the husband could not put out the eyes or break the limbs of the unhappy wife,[2] shows to what violence he did sometimes proceed.

It is true that as time went on the archaic form of purchase of the wife became more and more a purchase

[1] See *Tacitus.* Corpore infames. The one guilty of these vices was called by the Anglo-Saxons *bædling*; by the Salians, *cynitus.*

[2] See Davoud-Oghlou's *Législation des anciens Germains.*

of the guardianship and not of the person of the woman, and finally was only the mode of providing a dower. Yet in the early centuries marriage with the Germans was the buying[1] of a woman like any other property, and one of the first endowments of a wife was the barbarous and coarse *Morgengabe.* Woman was the maiden serving her lord, who knelt at his feet during his meal and yielded to his every whim.[2] There was a coarse and brutal side to German marriage, as well as a more elevated. A wife rated at so many pieces of silver could not be the ideal "socium laborum et periculorum," companion of labours and dangers, whom Tacitus pictures. Nothing shows the degrading side of this connection better than that provision of the Anglo-Saxon law, which we shall quote, in regard to the compensation made to a husband for the adultery of his wife, wherein a woman seems to be valued like any other property, and the offender is obliged to furnish another wife in place of the false one.[3] Whatever purity the Teutons may have preserved in their native wilds, they did not long retain under the temptations of the Roman cities.

When Christianity first touched them they were beginning to feel these degenerating influences. It was fortunate for the future of Europe that the elevating power of this Religion came to aid the German habit of purity and estimate of woman, before Roman and Greek vices had sapped the Teutonic character. The best results of modern civilization have probably come from the position given to women in Europe by German customs, purified by the

[1] According to Grimm (*D. Alterthümer*) the phrase "buy a woman" for "take a wife" came down into the Middle Ages in many parts of Germany. (P. 421.)

[2] *Gidé.*

[3] *Leg. Aethel.*, 32.

Christian Faith. That modern society has not decayed like ancient, and that pure family-life still supplies fresh forces to races a thousand years old, is due above all to the teachings of Christ, acting on German barbaric virtue and respect for woman. The peculiar chivalry in the sentiment towards woman which softened manners and civilized certain classes so much in the Middle Ages, and which still ornaments modern society, is a combined product of the German and the Christian, and is a feature unknown to classic races.

German Tutelage—The Tutelage or *Mund* (*mundium*, probably from *manus*) of the German woman was very different from the Roman *manus*. It was a guardianship more in the interest of the woman and ward than of the husband or guardian. The "subjection of woman" rested on a different basis from that implied, and often acknowledged in the Roman law. There was none of that cynical contempt for her which even the Stoical jurists could not avoid expressing as for an inferior and very uncertain being. The German theory of tutelage simply rested on the fact that she could not bear arms, and therefore could not appear personally in the only forms of legal trial known to that people. She must be represented by another who must guard her rights and her interests. It has been said by a thorough investigator of this field,[1] that throughout ancient German legislation "woman appears with a mingled character of feebleness and of grandeur," which would not badly describe her position in modern civilization.

No German woman[2] of the higher classes was permitted

[1] Sallantin. *De la Puissance Maritale en Droit Romain et en Droit Français.*

[2] Nulli mulieri liceat in suæ potestatis arbitrio, id est sine mundio vivere. (*Rotharis.*, p. 205.)

to live without a guardian.[1] The tutelage passed from the father to the husband.[2] If the husband died the relatives of the widow could liberate the tutelage (*mundium liberare*) and buy rights of guardianship. The tutelage gave the husband the right to sell, punish, or kill his wife. If he killed her when innocent he was obliged to pay a heavy fine to the parents who had given her to him.[3]

The original form of marriage with the Teutons indicated a purchase; with the Scandinavians it is called in the sagas *brôd-kaup*,[4] *kaup mali*, *mundi-kaup*. By the law of the Alemanns, if the father demand the wife back, the husband must return her and compensate her with forty *solidi*.[5] By the Saxon law the future husband must pay three hundred solidi[6] to the parents.

The law of the Visigoths speaks of the "price" given by the groom to the parents;[7] the Burgundians give it a similar name; the Lombards call it *meta*. The Francs in later time, when it had become a mere form, speak of it as "*per solidum et denarium.*"

The laws of king Ine (688 A.D) say: "Gif man wif

[1] Megede unde wif muten aver vormunden hebben an jewelker klage. (*Sachsensp.*, 1, 46.) Mulier semper potestate viri aut potestate curtis regiæ debeat permanere. (*Ed. Rothar.*, p. 205.)

[2] Maritus est tutor uxoris post deponsationem. (*Sachsensp.*, III, 115).

[3] Si maritus uxorem suam occiderit immerentem, componat solidos mille ducentos parentibus qui eam ad maritum dederint. (*Rothar.*, 203.)

[4] Grimm, *D. Alt.*, p. 422.

[5] . . . reddat eam et cum quadraginta solidis eam componat. (*L. Alem.*, tit. 54.)

[6] Uxorem ducturus ccc. sol. det parentibus ejus. (*L. Sax.*, tit. vi.) Qui viduam ducere velit, offerat tutori pretium emptionis ejus. (*L. Sax.*, 7, 3.)

[7] Si inter sponsum et sponsæ parentes . . . dato pretio, etc. (*L. Visig.*, III, 452.) Si pater de filiæ nuptiis definierit, et de pretio convenerit, etc. (*Ibid*, III, 1, 2.)

gebycge, etc." "If a man buy a wife and the marriage take not place, let him give the money and compensate, and make *bot* (compensation) to his surety."[1]

An ancient historian speaks of marriage as being firmer if purchase-money had been paid.[2] The ancient Germans could sell wives as an insult or a punishment; the Icelanders had this power; the Frisians are related to have sold their wives and children to pay their taxes to the Romans. The Saxons, as we have seen, could buy a wife, but were not permitted to sell her. The Langobards gave away a wife, sometimes to an unfree person, probably as a punishment.

Aethelbert speaks also of buying a wife;[3] the price was called a *ceap, sceatt, gyft.* This king also commands that if a free man breaks the marriage tie with a free married woman, he shall buy another woman and bring her to the injured husband.[4] And, again, "If a free man take away a free man's wife, let him pay for it with his *wergeld,* and provide another wife with his own money and bring her to the other."[5]

By the laws of the Alemanns, he who marries the wife of another shall pay forty solidi to the injured husband, and restore the woman. If he keep the wife with the consent of the husband, he will pay 400 solidi—her full value; if she die before the husband has reclaimed her, he will also pay 400 solidi. The children born before the payment of her value, will belong to the first husband; if one

[1] *Leg. Inæ,* 31.

[2] Tutiorem matrimonii fidem censebat quod pretio firmaretur. (*Sax. Gramm.*, lib. v. p. 88.)

[3] *Leg. Aeth.*, 76, 82.

[4] *Idem,* 32. Si liber homo cum hominis liberi uxore concubuerit ejus capitale redimat, et aliam uxorem propria pecunia mercetur, et illi alteri adducat.

[5] *Idem,* 31.

of them should die, the second husband must pay *wergeld* or compensation;[1] that is, the wife and all that belong to her, are regarded as the property of him who bought her.

In the old Welsh laws, compiled 1180 A.D. and belonging to a much older period, we find the three stages of endowment of the wife existing together—the *amobyr* or purchase-money paid to the father by the husband, the *cowyll* or morgengabe, given by the husband to the wife on the morning after marriage, and the *agwaddi* or dower given by the father to the husband.[2] All the ancient Welsh laws give the wife half the property if she be seven years married and separated without fault of her own.

Scandinavian Customs.—The most ancient German customs are those of the Scandinavian races. They are stamped with a singular respect for woman; and yet in some directions she was especially under subjection.

Their oldest laws punished the murder of a humble maiden more than that of a chief. The weaker sex was protected in innumerable ways; and even as late as the 12th century, a simple kiss forced upon a maiden was punished with fine or exile; and in the 15th century, a law of Copenhagen orders the adulterous woman to be buried alive, and the guilty partner to be decapitated.

The Scandinavian woman carried arms by a champion, and pleaded or sat in justice through a representative. She was excluded from judicial debates but could act alone in small matters. At times, she had the right to choose her own guardian; if her tutor abused his rights she could bring an action. She had personality—property which she could call her own. If a relative was killed, she took a portion of the inheritance, or received the blood-money,

[1] *Lex. Alem.*, 51, 1, 2.

[2] *Ancient Laws of Wales, Dimetian Code,* p. 223.

though a less share than the males. The price paid to her natural guardian was gradually changed here, as everywhere among the German tribes, under the influence of Christianity, into a dower, which was increased by gifts from her own family. She received not alone arms and horses, but land and houses; so that her independence might be guaranteed. Reciprocal fidelity was demanded from her and her husband; if he abandoned or ill-treated her, he could be punished by the relatives, and *wergeld* demanded of him. Her dower could be secured by a kind of separation of goods. Partnership in property was permitted in Iceland between husband and wife, but the husband usually had the power of management. At the husband's death, the widow succeeded to a portion of his power; she could dispose of the hand of her daughter, and be guardian of the minor children; she was in fact tutor, except that she must call in her near relatives for assistance. She could perform no acts in law, for in these arms are necessary, but she could direct her champion; she was not the legal guardian of her children, but must be consulted by the "tutor"; she did not fight, but encouraged the warriors; she did not sacrifice, but interpreted and revealed the oracles.[1]

In Norway, the woman was always in minority, but, under certain conditions, was allowed a free administration of her property. In Sweden and Denmark, she was more like a minor and the tutor represented her more generally; he could dispose of her hand, but she could refuse, and, if he neglected his duty, choose a husband for herself.

Marriage in Scandinavia could take place without clergy, but divorce required a religious rite.

The wife could demand this, if the husband wasted

[1] *Gidé.*

their common property. The husband was absolute master of the property of the wife,[1] even of her dower, but if they were separated, he must restore all that belonged to her, and from one-third to one-half of their common acquisitions. Her natural tutors could always act against him in law. She had few separate rights, and could contract but few debts without his authority. It may be said in general that the oldest and most characteristic German customs—the Scandinavian—placed woman more under subjection than do those of the tribes brought under Roman and Keltic influences. This peculiarity has affected all modern legislation in the Scandinavian countries.

Marriage under German Customs.—A wife under the old German law was in the power of the husband in all acts of domestic life, and in civil life she could only act through him. She entered with all her property under his *Mund* or guardianship, but he could not dispose alone of her estate. In acts of sale, he appears as her guardian, not master. At his death, she received a certain portion of their common acquisitions, one-third in some tribes and one-half in others. There was as yet no partnership, and she transmitted no right in the common property to her heirs. The husband could dispose of their common goods; he alone had the right to sell. The wife's property consisted, first of the price of purchase, which gradually became changed under the higher views of marriage taught by the new Faith, into the dower, and was finally paid by the father; secondly, of the "morning-gift;" thirdly, of

[1] In case of there being no children, it was not considered just for the husband to alienate the property of the wife, but when it was done, the action must stand in law. Nullâ prole suscitatâ vel superstite, alienare non debet prædium uxoris maritus; si tamen alienaverit, stabit alienatio. (*Lex Scaniæ Simon*, p. 97.)

her private possessions, and finally, of a certain portion of the common gains. During marriage, the husband managed the dower; if he died first, it returned to the widow and her children, the principal belonging to the latter. If the wife died first without children, the dower fell to the husband.

The Sachsenspiegel, a German code of the thirteenth century, says of the wife, that "she must live after the will of the husband, and be subject and obedient, for she is not competent of herself without her husband, whether to do or to leave undone."[1]

Girls were often excluded from the inheritance of land, under the necessities of a warlike time.[2] The position of woman was made secondary, and the rights of succession were restrained, so that she could not bring too great estates to her husband and thus break up a family property.

Approaches to partnership in property in marriage, and equality of rights of the sexes, have been the slow gains won by the Christian spirit in Europe. Even in the seventh century, the customary wills, bequeathing property, begin to show the Christian influence, equalizing the sexes. One of Marculfus' forms speaks of "the long-continued but impious custom" of providing differently for the sister from the brother, and divides the estate equally between the sons and daughters.[3]

[1] Und sie sol nach seinem willen leben, und unterthenig und gehorsam sein, denn sie ist ihres selbes nicht gewaltig, one ihren man, weder zu thun noch zu lassen. (*Sachs.*, I, 97.)

[2] Glanville seems to assert in regard to the old English law, that no female could share in any inheritance with males. Mulier nunquam cum masculo partem capit in hereditate aliquâ. (*Glan.*, v. 1.)

[3] Diuturna sed impia inter nos consuetudo tenetur, ut terrâ paternâ sorores cum fratribus portionem non habeant. Sed ego . . . sicut mihi equaliter a Deo donati estis filio. (*Marc. Form.*, l. 11, p. 177.)

Under the German customs, all sins and errors of the wife are severely punished. The husband can be faithless without redress. He can send her away, provided he give her a dower as large as the original one, and pay a fine to the king; he may abandon his home, provided he take nothing with him. If she leave him without good reasons, she may be suffocated in a ditch (necetur in luteo).

It is obvious that the position of woman under all the Teutonic tribes bore a stamp of barbarism. Something of that barbarism has descended in the English common law; though here the ascetic principles of the Canon law have aided in making her legal position as wife, inferior. The influence of the Christian idea as distinguished from asceticism of the Church, on the one side, or from the coarseness of German custom and law on the other, has been continually to make her, in all personal rights, the equal of man, and his superior in the moral field.

Free Marriage.—As the Roman institutions were transplanted to Gaul, "free marriage" (terminated at will) was especially adopted. Even Christianity did not for a time change it. The consent of relatives and friends was desirable, but not necessary. Marriage was held good without religious ceremonial or dower. The various laws of the Christian emperors only demanded the consent of the spouses and the testimony of friends. Divorce was comparatively easy, and among some of the tribes, was possible under mutual consent. Legal concubinage—a very different relation from "free marriage"—was almost universal, and even at times winked at by the Church.[1] Justinian regarded it as lawful, and it endured till the thirteenth century.

The new Faith of course acted directly against these evils, and everywhere—when allowed its natural power—

[1] *Dec. Conc. Toledo* (589 A.D.). (*Ic.* xvii.)

tended to abolish free marriage, unlimited divorce and concubinage. Even the Church, in the matter of divorce, was true to the teachings of the Master. The Council of Arles (314 A.D.) endeavoured to recall the Gallo-Romans to the respect of marriage, and warns those husbands who had surprised their wives in criminal practices, to take no others to wife,—a direction more strict than the apparent teachings of Christ. Another Council (365) excommunicated those husbands who abandoned their wives without proof of crime, and contracted new marriages; others were excommunicated who repudiated their spouses before the matter had been brought to the bishop for judgment.

The law of Aethelred[1] is striking. "And we direct very earnestly that every Christian man carefully avoid unlawful concubinage and rightly observe Christian law; and let it never be that a Christian man marry within the fourth degree nor have more wives than one as long as she may live. Whoever will rightly observe God's law and secure his soul from the burnings of hell." The Pepin Capitulary, addressed (744) to the Council of Soissons, declares that "during the life of the husband, no other ought to marry his wife," etc., and that the husband is not permitted to repudiate his wife except for the cause of fornication.[2] The Capitularies of Charlemagne (789 A.D.) are strongly for the indissolubility of marriage. In one he declares that nothing can break a Christian marriage,[3] and calls another union adultery.

The growing love and worship for the mother of Jesus, no doubt strengthened and intensified this respect for woman, now increasing in Europe.

[1] *Lex. Ethel.*, v. 11, vi. 11.

[2] Maritus non debet mulierem suam dimittere, excepto causâ fornicationis deprehensa. (*Bal.*, 1, 159.)

[3] Nequaquam posse ulla occasione separari.

The Church, too, set itself vigorously to root out the old venal character of marriage. The Council of Trêves (1227) forbade the relatives of the bridal pair from taking money under any pretence for the giving the woman in marriage.[1] The maternal power introduced into, or strengthened in ancient legislation by Christianity, was gradually developed until it finally reached almost the level of the paternal power.

The low idea of marriage, shown especially in the Anglo-Saxon laws, was elevated step by step. Under the Burgundians, two-thirds of the purchase money of the bride went to the father and one-third to the woman, showing that the archaic idea of sale still survived, This soon became only the purchase of the woman's tutelage, and later, under the higher influences, a mode of securing the independence and safety of the wife. The *Morgengabe* was gradually merged in the dower, and at length under the new refinement, dropped out of use. All the various forms of protecting or adding to the wife's property;—the purchase money, the morning gift, the Norman *douaire*, the "thirds" or "half" of the different tribes, the *dos ad ostium ecclesiæ*, all have formed the modern "dower." The ring is the only relic of the ancient *wed*, or pledge, that the man would fulfil his part of the money contract. Even as early as King Edmund (940–946 A.D.), the influence of the new Faith was felt in elevating the idea of the *wed* or pledge. It was then recognised as a promise that "the husband will keep the wife according to God's law, as a husband should his wife." Still a *wed* is paid at the same time to the father for the tutelage (foster-lean) of his daughter; and the husband's authority is described as that of a baron over his vassal; she is said to "choose his will." Even then,

[1] . . . quocunque colore quæsito aliquam pecuniam pro matrimonia contrahenda, etc.

on agreement, she was entitled to half the common property if they had children, and she did not choose another husband on separation.[1]

In the time of Henry I. (1070 A.D.) the widow was entitled to her dowry (when delivered to her before witnesses), and her "marriage gift," and one-third of their common earnings, as well as her clothing and furniture. If she died without children, her relatives divided her share with her husband.[2]

The Church laboured unceasingly to confirm the dower. Many canons made marriage illegal unless the woman were thus protected.[3] And even as early as King Canute, the Christian spirit seems to have influenced legislation against selling a woman in marriage.[4]

Sir Thomas Smith states that even as late as his time (1570), gold and silver were laid upon the "church book" at the door of the church by the husband when the father or next of kin gave the bride up, "as though he did buy her."[5]

The laws of the Germanic and Scandinavian nations show everywhere the effect of Christian influence in modifying the old license of divorce. The West-Gothic later laws permitted divorce only for adultery, though earlier customs allowed it by mutual consent.

"Tutelage," at first a domestic right in the interest of the tutor, became by degrees, under Christianity a public charge in the interest of the ward. In the time of Clovis,

[1] *Leg. Edmund. Thorpe*, p. 255.

[2] *L. H. Prim.*, lxx. 22.

[3] Dubium non est eam mulierem non pertinere ad matrimonium . . . nisi illa mulier . . . et dotata legitime . . . videatur *Conc. ap. Tus.*

[4] And let no one compel either woman or man to him whom she herself mislikes, nor for money sell her, etc. (*L. of King Canute*, 75.)

[5] *The Commonwealth of England*, p. 124.

the *Mund* of the woman belonged to her family; of Charlemagne, to the State. The king became gradually the protector of the weak, according to the words of the Holy Book, which entitle him the "Father of orphans and refuge of widows." At his crowning, he took the oath to be the "guardian of widows and orphans" (*tutor viduarum et orphanorum*) and promised officially to be the "especial defender of widows and wards" (*viduis et pupillis maximus defensor*).

"Let our envoys," says Charlemagne, "enquire into the condition of all widows and persons incapable of legal action; let them watch that they be provided with skilful tutors and friends of justice; if there be any bad tutors, let them replace them, because, next to the Lord and the saints, the emperor is constituted to be the protector and defender of such."[1]

Whoever injured the widow, was held to have violated the "Peace of the king." A special jurisdiction was constituted in her behalf; justice was made easy for her, and her complaints were always listened to. Woman was not yet made equal to man under the law, but was at least protected.

From the king, whenever his authority became weakened, the tutelage passed to the feudal baron. At first, the woman could not inherit land, but later she held it under the tutelage of the seigneur who represented her in law. Subsequently she was permitted the right of choosing her guardian, and the seigneur sold his right of tutelage. The tutor acted for her in all things. He could choose her "champion" (*advocatus*), and in this way gained the right of choosing her husband. Her hand thus became venal. Both widow and daughter were sold in marriage, for they

[1] Quia ipse Dominus Imperator, post Domini et sanctorum ejus, quorum et protector et defensor constitutus est. (Cap. 1, 8.)

became of importance to any baron, as controlling one or more men-at-arms with their estates. The baron had also an equal right in France over the marriage and landed property of the serf (or *mainmortable*). During the early part of the Middle Ages, the daughter of the serf did not succeed to the land of her parents. Through these rights of the master, arose the extraordinary and brutal "droit de seigneur."[1]

Under the softening influences of the new Faith, all these "rights" were gradually modified. The right of the seigneur over the hand of his ward was first attacked, and he was not permitted to affix a high price to his consent; at length the right of tutor came to apply only to the fief and not to the patrimony; so there became two tutors, the seigneur and the natural guardian, and the right of tutelage was bought and sold. As mercenaries took the place of vassals in the service of the king, the fiefs became simple patrimonies, and the two sexes equal. The woman owning a fief soon exercised all the rights of sovereignty; she became guardian, dispensed justice, signed treaties, and performed all the public legal acts of the man.[2]

France was the first to abolish tutelage; charters in the twelfth and thirteenth centuries omit any mention of it. Outside of marriage was complete emancipation; inside, the old incapacities. After the fall of feudalism, no guardian—at least in the cities—was appointed for a girl no longer a minor, or for a widow; she had access to all

[1] See on this curious subject, Delpit, *Sur le droit du Seigneur*, Delisle, *Etudes sur la condition de la classe agric. en Normandie*, and other works on *Jus primæ noctis*. Also Du Cange, on Mercheta and Cullage.

[2] *Gidé.* I desire to express especial obligations to this most clear and thorough writer on this topic.

courts; could plead and was represented in judicial duels by champions selected by herself. The incapacities of the Roman law disappear; she can give bail, appear in courts, be arbitrator and render testimony in civil or criminal cases. Her incapacity begins with marriage, and is derived from the German *mundium* or tutelage. The husband can beat his wife, though not to death, and chastise her reasonably.[1] The husband is responsible for his wife's offences and has the right to administer her property; all their goods and effects are common.

In general, it may be said that throughout Europe the influence of Christianity tended to purify law of the gross German prejudice, that bodily strength was a condition of civil capacity, and that woman was an inferior being—an impression from which even the Stoical jurists were not free. The sex unable to bear arms was gradually freed from disability and received an equal part in the succession of property, while in marriage the wife retained the administration of her property, and gradually acquired almost full legal equality with the husband.

It is not to be understood, however, that in this matter the Church corresponded to the Spirit of the Master's teachings. The Canon law was a reaction from pagan licentiousness, and too much narrowed the field of woman's activity, holding her in too close subjection, and has thus been adverse to modern progress.

In the north of Europe the old German tutelage of woman continued the latest; in the south, other incapacities from Roman law survived. In every part of Europe, there was a preference for male heirs for many centuries. In France, it was 1791 before all children were assured

[1] . . . battre sa femme, sans mort et sans mehaing, et la castier resonablement. (Ord. XII.)

equal rights in the family. The Code Napoleon abolished all legal distinctions of sex.

In Scandinavia, it is only in this century that the legal disabilities of woman have been diminished, and in some directions entirely removed; and in this century also, woman may be said to have been legally emancipated in Germany.[1]

In England the old inferiority of woman in marriage—an effect of German tutelage—was retained longer than in France, which came more under the Roman law. The canonists, who held the ascetic idea of marriage as an impurity, and of woman as an inferior creature, and a source of endless temptations to man, were only too rejoiced to place the wife under strict subjection and to almost absorb her personality in her husband's.

The religious influence, promoting entire partnership in property and interests, seems to have had more weight in France than in England

Of the rigorous English common law Sir Thomas Smith says (1571): "And although our Lawe may seeme somewhat rigorous towards the wives, yet for the most part they can handle their husbands so well and so dulcly, and specially when their husbands be sicke, that where the law giveth them nothing, their husbands at their death of their own good will give them all."[2] Glanville[3] still earlier (1181) says: "It should be understood that a woman cannot during the life of her husband make any disposition of her dower. For since the wife herself is in a legal sense under the absolute power of her husband, it is not

[1] Tutelage of woman was only abolished in Würtemberg in 1828, in Baden in 1835, and in Saxony in 1838; it is said to still exist in the Hanseatic towns and a portion of Hanover. *Gidé.*

[2] *Commonwealth of England*, p. 125.

[3] *Glanville*, c. iii. p. 16 (Beames).

singular if the dower as well as the woman herself should be considered to be fully at the disposal of her husband elect." He adds, that the husband can give, sell, or alienate her dower, and that the wife has no redress, even if she have not consented to this disposition of her property.[1] She cannot even make a will without the authority of her husband.[2] The same author testifies to the influence of the Church in confirming her dowry, "for every man is bound as well by the ecclesiastical law, as by the secular, to endow his bride at the time of his being affianced to her."[3]

The spiritual courts were not always in favour of the legal subjection of woman. Thus in the reign of Edward III. (1336–1431, A.D.) they held that wives had the right to make wills, and that efforts to prevent them were in violation of the usage of canon law. The church-door dower (*ad ostium ecclesiæ*) seems to have mainly passed away in the seventeenth century.[4]

The modern idea of absolute partnership between husband and wife, is not to be found in the old English law.

There exists still a form of contract, made in the time of Edward I., in which a man engaged to sell and deliver his wife to another man,[5] and a historical document speaks of a "bought wife delivered in a halter," as late as 1782.[6]

[1] *Glanville* (Beames), p. 63. [2] *Ibid.*

[3] *Ibid.*, p. 163. It is clearly not the canonists who put the wife's dower and property so absolutely in the power of the husband. This feature belongs to an archaic idea among the Teutonic tribes, of the subjection of the weaker sex.

[4] See that quaint book, *The Woman's Lawyer*, p. 111.

[5] Noveritis me tradidisse et dimisse spontaneâ voluntate mea, Gul. Paynell milite, Margaretam uxorem meam, etc. (Quoted from *Rot. Parl.*, vol. i. p. 146, by Pearson, in his *History of England*, vol. i. p 601.)

[6] Anne, daughter of Moses Stebbing, by a bought wife, delivered to him in a halter, Sept., 1782. (*Ibid.*, vol. i. p. 601, from Purleigh's *Register.*)

Fleta[1] defines the legal status of woman as "under the rod."

The conclusion from this very brief resumé of an important topic, may fairly be that the modern social and legal position of woman, while it owes much to ancient German customs, has been far more influenced by the estimate set upon woman and marriage by the Christian doctrines.

Christianity, it will be seen, has done away with "tutelage," at least in central Europe; has elevated marriage from the idea of a purchase to that of a spiritual and bodily union; it has protected woman by everywhere encouraging the dower; it has sought to make her in its own fields the equal of man; and through its influence, more than any other, has "the proprietary and personal independence of woman" been advanced throughout Europe and the Christian world. This has been one of the most important contributions of the religion of Jesus to the progress of the race; its effects are to be felt through all succeeding ages.

[1] Quædam sub virgâ velut uxores. *Fl.*, 1, c. 9.

CHAPTER XII.

PERSONAL FEUDS AND PRIVATE WAR.

IN all barbaric society, individual injury is at once revenged on the person of the enemy, and the injured, being a member of a family, is protected by this association, and his wrongs are held as wrongs done to the family. So "feuds" (*faida*) arise, which are so large a part of the objects of legislation of the early Teutonic and Keltic races. Wherever lands are inherited, there goes with it the inheritance of the coat of mail and the family feud.[1] Among the American Indians, it is well known that the murder of a single member by one of another tribe, entails a feud against all of that tribe, until revenge is satiated by another murder. The same thing is still true of the Arabs, who carry out blood-feuds to an extreme, and whose faith has not softened this feature of barbarism. Philosophers have called the practice the habit of "self-help," as opposed to leaving punishment with government. It seems rather the unbridling of revengeful passions, and belongs to a low state of human progress. The Teutonic races, however, early attempted to restore order to society by arranging fixed methods of satisfying enmities. A careful and elaborate system of

[1] Ad quemcunque hereditas terræ pervenerit, ad illum vestis bellica et ultio proximi . . . debet pertinere. (*Leg. Angl. et Wer. Lex. Salic.*, tit 13, and many Anglo-Saxon Laws.)

fines, or amends, was arranged, first no doubt paid to the sufferer or his family alone, and afterwards to the prince or king also, as representing the injured community. Each member and portion of the body was strictly valued, and every possible injury estimated, so that all penal and repressive legislation was represented by scales of fines and pecuniary penalties. A favourite Anglo-Saxon proverb was: "Buy a spear from the side, or bear it!" (Biege spere of side oder bere!) Capital punishment was seldom employed, as the tribe could not spare a member, and preferred fines to death-penalties. The extreme punishment with the early Teutons was "out-lawing," which not only banished the offender from the society of his fellow-men and made his murder an act of justice, but even cast out his body from honourable burial. The first effort of the new Faith on the barbaric tribes of Europe, was to repress feuds by encouraging fines. King Alfred, in the introduction of his laws, speaks of the ordaining of *bót*, or money-fines to repress feuds, by the legislative assemblies of England, as a special effect of the Christian faith.[1]

The codes of every tribe, after its conversion to Christianity, are filled with rules as to pecuniary amends. The two sexes and different ranks of life are carefully estimated as to their relative values. It is curious that by the laws of the Wisigoths, the compensation, or *wergéld* ("man-money," or "blood-money") of a maiden under fifteen years was only half that of a youth, while between fifteen and twenty years, it was more than that of a man; between twenty and forty it was less, and still later, yet less. This people felt among the first the influence of the new power in the world, and *faida*, or feud, was early abolished, and it was declared that the author of the crime is alone responsible, and no persons, whether relatives, or neighbours, will have to fear any calumnia (offence). (Lang. C. 6, 8.)

[1] See Thorpe's *Coll.* and the chapter of this work, on "Anglo Saxon Laws."

Among the Alemanns and Burgundians *faida* still existed, though restrained, but with the Langobards it was declared that: "In all wounds between freemen, we have put stronger compositions than the ancients, that no recourse be had to feud (*faida*), and it be replaced by an amiable friendship."[1] And, "He who for a wound or a blow hath received fine for a murdered man, and taken care not to exercise *faida*, yet killeth a man of the other party, he will pay to the relatives double the fine."[2] Feud is raised, or ended, usually by paying a certain fine. The steps for abolishing feud were gradual; first the home was protected, and whoever killed a murderer in his own home, even in anger, paid a fine equal to the legal value of the person, provided he were slain at once. But if he were killed after consideration, the fine was increased seven-fold. And in certain cases, all the offender's goods were confiscated, and even he himself was put to death. In the law of the Bavarians, different parts of the house were valued even as different members of the body, and suitable fines fixed on their violation. Next, certain places were made sacred from feud, such as public places like the *mallum* (or legislative hall), the market, the town, and various asylums, and most of all, the church. Then the transit, or journey from the house to the mallum, the town, the market, the court, or the church was protected. From protection in space, the legislation was transferred to time. All religious days were sacred from feud, such as Sundays, Festival days, the Christmas-tide, Good Friday, Ascension-day, and the like. The power of the king, too, imposed peace on certain places, such as royal roads, water-courses, and forests. Protection was extended also to widows

[1] *Leg. Roth.*, 74. [2] *Ibid.*, 6.

orphans, the poor, and pilgrims. And finally, even drawing the sword in presence of a bishop, or dignitary of the Church or state, was punished by a fine.

Among the Salian Francs, we find a decree very early (596 A.D.) against feuds. Childebert II. limits it to murder, and declares it a pagan institution which had destroyed many families. He orders that unprovoked murder should be punished with death, and should not be redeemed with fine, "because it is but just that he who has known how to kill, should learn how to die."[1]

The Church everywhere sought in the Middle Ages to encourage the settlement of contests by fines rather than fighting, and to obtain concord by arbitration or through judges rather than by litigation. It was earnest in its endeavours to determine facts, not by duel, but by witnesses.[2] In England, in the seventh and eighth centuries, so great was the influence of Christian principles, war itself was for a period regarded as antichristian, and a confessor at shrove-tide would refuse absolution to a man at feud, who would not make peace with his enemy.[3]

A precious document describes to us the early influence of Christianity in substituting punishment instead of fines for murder. *Pravda*[4] is the name of the ancient Russian code, first collected thirty-two years before the introduction of Christianity (988 A.D.). From this we learn that "King Wladimir lived in the fear of God, and murders waxed greatly. Then spake the bishops to Wladimir, 'Murders wax greatly. Why dost thou not punish?' He answered,

[1] De homicidiis, vero ita jussimus observare, ut quicumque temerario, ausu alius sine causa occiderit, vitæ periculum feriatur. Nam non de precio redemptionis se redimat aut componat . . . quia justum est, ut qui novit occidere, discat moriri.

[2] Reeves' *Hist. of English Law* (1, 116).

[3] Pearson's *Hist. of England.*

[4] *Das älteste Recht der Russen.* Ewers. Hamburgh, 1826.

'*I feared injustice.*' But they replied, 'Thou hast been set by God, for the punishment of the wicked and for grace to the good. It becometh thee to punish the murderers; but only after much searching out.' Then Wladimir rejected the *wergeld* (fine) and punished the murderers."

This ancient chronicle shows remarkably the change which must have passed through every barbaric tribe after the new power began to work. First the bitter and deadly feud under the reign of private revenge; then blood-money paid to the person injured or to his relatives; then a fine paid to the prince by one who had no family, and afterwards by any offender, as a surety of peace and to atone for injury done to the community. The first effect of the new Faith is a fresh sanctity given to human life. Wladimir feared to execute murderers, lest he should do wrong by taking life. But the new view of justice and of punishment which also came from this Faith, taught him that he must repress evil-doers even at the sacrifice of life. The fines which were once a safeguard of order, now became a composition with guilt. Capital punishment here was an offspring of the spirit of true humanity.

Thus one of the great movements in human progress, the substitution of law and legal penalty for private revenge, was especially aided on the continent of Europe by Christianity.

It is true that society everywhere tends, under Divine influences and the instincts and sympathies of human nature, towards this improvement. Yet imperfect faiths and other causes retard the drift. Christianity has no purer page in its record, than the history of its efforts to abolish feuds and blood-revenge, and to draw men under law and government; thus beginning that great work of bringing Peace to the earth, which after many ages it shall certainly consummate.

CHAPTER XIII.

PRIVATE WAR AND PEACE OF GOD.—ARBITRATION.

ONE of the especial curses of the Middle Ages—a natural accompaniment of feudalism—was the practice of waging "private war." This was a privilege allowed in many countries only to gentlemen, but in Germany, the custom prevailed through all classes. Every one who thought himself wronged, had the right to send a formal declaration of war to his enemy. The forms were fixed, a special code existed for it; the messenger or ambassador must convey the challenge on the same day with the offence; the challenger and his messenger must give proof by oath of having gone through the necessary forms. If the ambassador happened to die, the author of the war must prove by two compurgators that the challenge was given. If the messenger was injured by the one challenged, he was dishonoured, and the other was not obliged to observe the forms and delays of war. The challenge must proclaim openly that the one desired to be the enemy of the other, and declared war; as thus (in 1451) "Know, Imperial cities of Ulm and Esslingen, that I, Claude, Duke Von Salz, etc., etc., do declare and desire to be your enemies on account of Henry etc., etc.! And he who would deliver himself to acts of enmity before the time, let him be considered brigand, incendiary, and murderer; and we

desire by this note, sealed by our arms, addressed to you publicly, to preserve our honour." [1]

In France, the author of the war could call upon those owing him assistance, and upon his relations up to the seventh degree. If they refused help, they lost all the advantage of relationship. Two brothers of the same father and mother were not permitted to wage war with one another; two "uterine brothers" were allowed the privilege. Holy clerks, monks, women and children were not bound to join in these personal wars. The towns often had the privilege of war granted them in their charters.

Among the instances of private war in the Middle Ages, it is related that in the fifteenth century, a cook of Eppenstein,—a sheep of his having been killed by Count Von Solms, and the value not being paid—sent, with the scullions, a formal challenge of war to the nobleman. In 1501, a ruined merchant of Nuremberg is said to have been imprisoned for debt. He escaped and demanded from the city a heavy sum as indemnity for his unjust imprisonment. The town refused his demand; whereupon he sent a challenge of war, seized one of the wealthy citizens who had gone to visit his estates in the country, refusing to ransom him for less than 3,500 florins, and forming an alliance with some barons, plundered and annoyed the city till the inhabitants were obliged to yield.

In another case, a nobleman declared war against the city of Frankfort, because a lady residing there had promised a dance with his cousin and had danced with another. The city was obliged to satisfy the wounded honour of the gentleman. Even as late as 1450, there was a challenge from the baker and domestics of the Margrave of Baden to seven Imperial cities; and in 1462, a baker of the Count Palatine defied three cities; and in 1471, the shoe-blacks

[1] Wachter, *Beiträge*, etc. *Beaumanoir.*

of the Leipsic University formally challenged the Provost of the city.

In the fifteenth century Germany was described by a Roman Cardinal "as one grand robbery" and that nobleman as most famous who plundered most.[1]

The Margrave of Brandenburg boasted that he had burned 170 villages; everywhere were the desolation of farms and the obstruction of commerce. The peasants and humble cultivators of the ground suffered most from this anarchy. An estate was valued by its convenience of situation for despoiling peasants and travellers.

Of France, in the eleventh century, a monkish authority says, that the whole kingdom was disturbed by incessant fightings:—"Everywhere were robberies, and besieging of public roads, endless burnings of houses," the only causes being an unconquerable greed for money.[2] So terrible were the evils that a Church Council held near Soissons (A.D. 909) declared that "the cities of France were depopulated, the monasteries burned or destroyed, the fields reduced to solitude, so that we can truly say that the sword has pierced to the very soul."[3] Wherever feudalism extended, there was private war. Each gentleman and nobleman felt it to be a peculiar right of his class. It existed in all parts of Europe; less perhaps in England than elsewhere, owing either to the greater power of the Norman kings, or to the deeper working of Christianity. In Germany, as we have said, its effects were the most

[1] Germania tota magnum latrocinium, et ille inter nobiles gloriosior qui rapacior.

[2] Erat eo tempore, maximis ad invicem hostilitatibus, totius Francorum regni facta turbatio; crebra ubique latrocinia, viarum obsessio. . . incendia infinita, etc. (*Gesta Dei per Francos*, 1, 482.)

[3] Depopulatæ urbes, destructa vel incensa monasteria, agri in solitudinem sunt redacti, ut aut vere possimus dicere, quia pervenit gladius usque ad animam. (*Gesta. Tros.*, 2, 536).

disastrous, threatening even the dissolution of society. There was in that country a greater number of nobles and of self-governing jurisdictions than in any other. Each city or province had independent powers with especial privileges. The interregnum between 1256–73 accustomed these powers to uncontrollable license. The Diets seldom met, and were not, from their numbers, adapted to settle questions of right. In consequence, Germany had no court capable of deciding disputes between its more powerful members, or of repressing such evils as private war.

The "Peace of God."—A remarkable mode in which the religious spirit aided to raise society of the Middle Ages out of this barbarism was through the establishment, by the clergy and the mercantile community, of the so-called "Peace of God." In France especially, in the tenth and eleventh centuries, there seems to have been a kind of religious "revival" of peace. The clergy preached it; religious enthusiasts went from village to village proclaiming it in the name of Christ the "Prince of Peace;" holy relics were brought to public places, on which the wild barons swore a vow of peace; great councils were held to spread abroad the ideas of brotherly amity, and the Popes themselves wrote letters and published Encyclicals to recommend the vows and habits of concord to all Christian nations. An enthusiasm thus nourished by religion took possession of a military and uncontrolled population for a period, in favour of quiet and good will towards especially the poor, the unbefriended, the weak, and those engaged in useful occupations, or in the services of religion. There was almost a "crusade of peace" in certain parts of France in the eleventh century, One of the old liturgies of this period made a special ground of penitence that the petitioner had not reconciled two enemies.[1] The clergy not

[1] Peccavi, duos non conciliavi. (*Digby. Mor. Cath.*, 9, 12.)

being able in such an age to secure all the year for peaceful pursuits, induced the wild barons to admit certain days, certain places and pursuits, as always resting under the protection of a consecrated peace. Whoever violated this compact was exposed to every worldly and spiritual penalty. He lost his fief if a baron, his other property went to his heirs, he was driven out from among Christian men, and his body refused Christian burial; if a serf he might be punished by the loss of his hand or even of his life. All the thunders of the law and religion followed the accursed man who broke the peace of God. The holy days were protected, the feasts and other Christian festivals, and even in each week, the time from Thursday evening to Monday morning—this period covering the days of the Passion and the Resurrection. The peasants were especially guarded by this humane impulse, and the cart and grain and cattle of the farmer were made as sacred as the altar or the church. Christianity, with its usual spirit, led men to protect particularly the weak, and every vow of peace included the women, children, travellers, strangers, and holy clerks.

When society was in the chaos we have just described, and law existed alone in the strong hand, and all the weaker classes were exposed to incessant oppression and cruelty from the stronger, we can imagine what it was to have created a religious and sacred protection, if only for a time, for all who were trodden down and injured. It gave European society its first taste of a rule of law and order. The brotherhoods for the *Paix de Dieu* in France in the eleventh century formed the great point of resistance against the feudal barons and their anarchical conflicts. They laid the foundation for the rural *Communes*, which have been so important an element since in the French political life, and they formed the first great support for the kings when they subsequently endeavoured

to introduce law and courts and royal power in place of "Private War"[1] among feudal or half independent barons.

Many religious fraternities to reconcile enemies were formed in the Middle Ages. Muratori traces the guilds of Italy to missionaries, who in the time of Frederick II. went about endeavouring to appease discords and make peace.[2] One of the conditions for entering a fraternity of builders formed at Chartres in the Middle Ages was that the candidate must confess and be reconciled to his enemies.[3]

Among the early efforts to bring about peace in France was a meeting of the clergy and Christians at Charons, 989 A.D., which solemnly anathematized all who should plunder the poor and attack the holy clergy. The establishment of peace was held to be a means of removing Divine displeasure, and in 944, after a terrible pestilence in Limoges, the clergy ordered a fast and the "Pact of Peace" was concluded by the seigneurs and the duke. It is related by the chroniclers that the archbishop "on account of the violence of the men of war and the ruin of the poor," forbade divine worship in monasteries or churches to those engaged in breaking the peace.

The form of the pledge of peace, administered by the archbishop to the fierce barons, is given by Du Cange:

"I, W——, Archbishop of Puy, in the name of the Holy Trinity, to all who expect supreme pity . . . As we know that without peace no one shall see the Lord; we order the faithful . . . that no one shall make an attack on a church, that no one shall plunder horses, cattle, chickens, etc., from the peasants . . . that no one shall attack merchants or plunder them . . . If

[1] See Semichon, *La Paix et la Trêve de Dieu.*
[2] *Ant. Ital.*, lxxv.
[3] *Digby*, 9, 12.

any one do not keep this peace let him be excommunicated, anathematized and driven from the Church."

The Council of Poictiers (1004 A.D.) attempted to establish forms of law to check private war. If there was a quarrel between two dioceses both must appear before the seigneur or judge of the county, and endeavour to obtain justice. If one should refuse to appear, the judge must do justice and seize upon "the hostage" of the recusant. If he had not the power, he must convoke the princes and bishops, and all should unite to attack and punish the resisting member, and not cease till he yields to the claims of justice.

These first efforts under the religious impulse to bring order out of chaos and to create law in a barbarous society, are highly important in the history of progress.

In 1021 famine and war desolated the country around Amiens. To avert these evils the relics of saints were collected in the churches, and a vow was made over them of an inviolable "Peace of God" during one week, and the people took oath, if a quarrel arose, not to resort to rapine and burning till they had on a fixed day exposed their griefs before the Church. The most terrible forms of excommunication were uttered against those "Chevaliers who would not promise peace," and "in the name of God the All-powerful, of Jesus Christ, and the Holy Ghost," they were accursed of men.

These efforts of the clergy succeeded in forming Peace Associations, which frequently employed the barons to execute the orders of the councils, and to collect the tribute (*paciegium*) which formed a fund to compensate the sufferers under violence. Thus early began a kind of assurance fund or public tax to protect the weak of society. In 1030, a famine occurred in parts of France, followed by years of abundance. The popular gratitude to Providence

was made manifest in councils for the Peace of God. Laws were passed to forbid travelling with arms, and the church was made an inviolable asylum for the weak and persecuted. The assemblies were electrified with pious ardour, and the bishops raised their crosses to heaven, and men of the people, holding their hands in the air, cried "Peace! Peace!" and took God to witness of their "perfect pact of peace."[1]

Among the ordinances establishing peace, are those of the Council of Limoges (1031), making the church an asylum, protecting the clergy, forbidding violence or rapine upon peasants, serfs or clerks, proclaiming fines for breaking peace, establishing days of peace, and enforcing it on all religious days. Peasants, serfs and their animals are protected, and war is confined to the seigneurs. All disputes are to be brought before the bishop and his chapter. This, be it remembered, was two centuries before the royal power in France attempted to restrain the warlike propensities of the feudal barons. The proclamation of peace was somewhat in this wise: "From Thursday evening, among all Christians, friends or enemies, neighbours or distant, peace must reign till Monday at sun-rise; and during these four days and four nights there ought to exist a complete security, and every one can go about his own affairs in safety from all fear of his enemies and under protection of this truce and this peace. Let those who observe this peace be absolved by the Father All-powerful, by Jesus Christ His Son, and by the Holy Ghost," etc. etc.

"Let those who have promised truce and have voluntarily broken it, be excommunicated by God, etc.; let these be accursed for ever, damned as Dathan and Abiram etc. . . . If any one in the days of the truce of

[1] Quoted from old chronicles, by Semichon.

God commit a homicide, let him be banished from his country, let him depart from Jesus!" etc.![1]

The decrees of the Council of Roussillon (1047) "established this peace and this truce, because the Divine Law and the Christian Religion were almost destroyed, and iniquity passed all bounds, and charity was cooled," etc.

The Popes were not behind the councils in encouraging peace among the barbarous barons. Pope Nicholas II. (1059) and Alexander II (1068) make public proclamation of the Peace of God, so that this first effort for civilization and order spread into North and Middle France, Italy, Spain, England, Normandy and Belgium.

It is worthy of notice that in a charter of this period, from the Archbishop of Bourges (1065), commerce is protected by this new pact of amity, and whoever takes refuge in a fair is to be especially safe.

Under Pope Urban II., the Council of Clermont (1095) re-affirmed this peace, and ordered that whoever on the days of peace should strike man or woman, unless in self-defence, should be held a violator of the peace. If after a summons by the archbishop he appear in seven days, he will merely pay a fine. If he refuse to appear he will be excommunicated, and after excommunication will pay whatever fine the bishop's court may set. Whoever kills a man during these days will be exiled for seven years, unless he reconcile himself with the relatives of the murdered one, and pay a fine, which is to be divided between the ecclesiastical and civil authorities. Merchants, travellers, women,[2] and the cattle, implements and flocks of the peasants are protected. If any baron violated this compact, the count and other nobility must prosecute

[1] *Historiens de France*, quoted by Semichon.

[2] Statutum est ut in omni die, et monachi et clerici, et feminæ et quæ cum eis fuerint, in pace permaneant, etc.

him, after due warning by the Peace Association. This pact was to last three years. In other associations, all the nobility over twelve years of age took oath to observe this constitution of public order, and, if summoned by the archbishop, to take arms and aid, "so may God and the saints aid me!"

The king gradually put himself at the head of these peace associations, and they were no doubt one means by which the royal power in France controlled the feudal savagery.

At the end of the twelfth century, the enthusiasm was increased by the appearance of one who claimed to be a divine messenger. A carpenter of Guienne, working in a forest, had a vision of the Virgin Mary, who showed him a banner with the words, "Lamb of God who takest away the sins of the world! give us peace!" and directed him to carry this banner to the bishop and invite him to preach the "Peace of God." He obeyed, and was received everywhere as a messenger from heaven, and various noble persons and others formed brotherhoods of "Agnus Dei" under this banner, and laboured for peace.

In the thirteenth century, Philip Augustus prohibited any one from commencing hostilities against the friends or vassals of adversaries until forty days after the offence; this was called the "Royal Truce" or "King's Quarantine."

In the same century, Friar John of Vicenza traversed a great portion of Italy, preaching the "Peace of God," reconciling individuals, and even the feuds of towns. In the succeeding centuries, other monks made similar journeys, and aided to deliver Europe from its ancient barbarism. In the fourteenth century, a great religious movement for peace stirred the minds of different nations of Europe. Pilgrims with white bands around their necks,

I Bianchi,[1] marched through various lands, preaching the duty of a Christian peace. It is related that in the month of October, 1338, there appeared in a church of Rome, in the silence of the night, certain unknown persons who cried incessantly, "Peace! Peace!" and uttered no other words. The people hearing these appeals, went to the palaces of the Orsinis and the Colonnas, who were enemies, and made peace between them in a truly miraculous manner.[2] A beautiful letter of the good king of France, St. Louis (1276 A.D.), to his son, is handed down, showing how religion acted in promoting peace. "Dear son, I charge thee that to the utmost of thy power, thou keepest thyself from making war with any Christian, and if any have injured thee, try various ways of recovering thy right before thou makest war; and have care to eschew the sins that are committed in war," etc. He is exhorted to spare the clergy, and poor people, and the property of those who have not injured him; and, best of all, to avoid all wars, for that was pleasing to our Lord.[3]

The nobles themselves, in France, feeling the calamities of private war, gave bonds of assurance, by which any violation of order might be punished; and even agreed to refer their disputes to a majority of their own number. But it required all the efforts of the Church, the mercantile community and the crown, for centuries, before this great abuse could be remedied. It is said that no less than thirty councils in different parts of Europe proclaimed the *Treuga Dei* (Truce of God), or *dies treugarios*. And it was not till the fifteenth century that Charles VI. ventured

[1] *Muratori.*

[2] *Lagacio* (quoted by Digby, *Mor. Cath.*, 9, 12).

[3] Chier fiuz, je l'enseigne que tu te gardes a ton pooir que tu n'aies guerre a nul Cretien, et s'il te faisoit aucunes injures, essai plusieurs voies a savoir se tu pensser recouvrer ton droît, etc. —*Duchesne.*

to put forth a law absolutely forbidding, under heavy penalties, private war in France.

The power of Jesus on human society is seen in the slow humanizing of feelings and practices. It is aided often by other forces, which are more selfish. All self-guarding interests in European communities must have discouraged private war; the influence of associated life in towns, the prospects of gains in trade, and the struggle of kings against feudalism worked to put an end to it. But more than any or all of these were the teachings of benevolence and unselfishness read each day, or expressed at the altar, or from the chancel, and the sentiments of affection and reverence cherished everywhere by individuals towards Him who is the "Prince of Peace."

Germany.—The Peace of God is said to have been first established in Germany in 1081, by the bishop of Liege. It was agreed by common consent in his bishopric, that from the first day of Advent till Christmas, and from the beginning of Lent to the eighth of Pentecost, no one should carry arms, or be guilty of incendiarism, brigandage, or acts of violence; that no one should wound or kill any one. Every free man convicted of such an attempt, would lose his heritage, be deprived of his fief, and driven from the diocese. Every serf would be punished by loss of his property and his right hand. The "peaceful" time each week was to be from Saturday at sunset till Monday morning. The Archbishop of Cologne soon after introduced a similar truce in his diocese, with the solemn order that "one ought never to forget that the vow of holy peace must be kept with a fidelity as much greater as it is made to God and not to man." During 1093, an association was formed in Germany, of the nobles and princes, without the concurrence of the emperor, for a peace to last from November for two years till the Feast of the

Passover. In 1097, the emperor united with it; in 1103, a pact of peace was formed by nobles, bishops, and emperor for four years; it was similar to the French compact, but included also the Jews.[1] Very severe penalties were affixed to its violation. The council of 1105 proclaimed the Peace of God; but in general it may be said that in Germany the imperial power, more than the Church, sustained and protected order. Under Frederick II. (1224) the "truce of God" had become the "truce of the empire," with similar days devoted to cessation from violence and war.

The evil of private war, as we have before described, had reached in that country its utmost extreme. All efforts against it seemed in vain. The emperor (1255) forbade it absolutely, but without avail. Finally cities and nobles entered into alliances and associations to form a public peace, and to punish those who should violate it; and in this mode, the leagues of the Rhine and of Suabia, from the twelfth to the fifteenth century, endeavoured to secure general order and security. Owing to the greater independence of the rural nobility and of the separate provinces in Germany, the devices which were so successful in France failed here. The religious sentiment alone could not put an end to this savagery. The last remedy tried was the application of an ancient religious custom, under the combined influence of the Church and the free cities—the formation in the twelfth, thirteenth, and fourteenth centuries by the barons, nobles, bishops, and cities, of courts of arbitration, or *Austräge*.[2]

[1] The Sachsenspiegel also includes the Jews. Clerici, mulieres, monickes, agricole, mercatores, itineratores, piscatores, *Judei*, omni die et omni tempore firmam pacem habebunt in personis et in rebus. (*Ssp.*, ii. 66.)

[2] *Das Austrägal-verfahren d. D. Bundes.* Von Leonhardi. Frankfurt, 1838.

Arbitration.—This practice exerted so strong an influence in bringing order out of anarchy, and introducing peace instead of war, in the twelfth and thirteenth centuries through a large portion of Germany, that it is worth while to dwell on it briefly. It was an ancient custom among the German race, when a case in dispute could not be readily decided by the wager of battle, to refer it to wise men of the tribe for arbitration. Yet even as late as the tenth century, an Emperor of Germany (Otto I., 938 A.D.) refused to decide certain difficult cases by arbiters, and preferred to refer them to the sword;[1] and another important legal question—whether the sons of brothers should inherit property equally with the fathers or ancestors—was decided in Otto's reign (942) by the sword, in favour of the former.[2] When Christianity became a living force among these tribes, the practice of arbitration was strengthened and reinforced by the words of Christ to His disciples: "If thy brother sin against thee, go, show him his fault between thee and him alone; if he hear thee, thou hast gained thy brother. But if he hear thee not, take with thee one or two more, that at the mouth of two witnesses, or three, every word may be established. And if he refuse to hear them, tell it unto the congregation," etc. (Matt. xviii. 15-17); and by the words of Paul, "If then ye have to judge of things pertaining to this life, do ye set them to judge who are of no account in the church! . . . Is it so, that there cannot be found among you one wise man who shall be able to decide between his brethren, but brother goeth to law with brother and that before unbelievers? Nay, already it is altogether a defect

[1] *Von Leonhardi.*

[2] Rex autem meliori consilio usus noluit viris nobiles ac senes populi inhonesti tractari; sed magis rem inter gladiatores discerni jussit, etc. (*Annal. de rebus Saxm. etc.*, quoted by Leonhardi, p. 20.)

in you, that ye have lawsuits one with another" (1 Cor. vi. 11, 7).

It became a habit of the Christians to refer their disputes and difficulties to their own brethren, or their leaders and overseers, for decision. The bishops' trials (*audientiæ episcopales*) became a regular part of the legal machinery of Christian society. Their decisions[1] were often without appeal; and on the request of one of the litigants even purely civil cases could be decided by them. The habit of referring contests and disputes to the clergy as arbitrators, came down in Germany into the Middle Ages. And at length in those centuries we have mentioned, there seemed no other way out of the anarchy of society, than by some new application of this principle. The feuds of the barons with one another, their disputes with the peasantry, the contests of city with city, or of each with the nobility, the differences of the clergy with the parishes or with the barons, were continually referred during the twelfth and thirteenth centuries, to *Austräge* or courts of arbitration. These arbiters were sometimes named in treaties, sometimes chosen by mutual consent, or appointed by neutral persons, or taken by lot.

Leonhardi,[2] who has written a learned work on this subject, gives a list of numerous arbitrations during these centuries, and in almost all cases the arbiters are the clergy. One of the first *Austräge* reported is in 873, in a dispute between the Emperor Lewis and the Bishop of Strasburg, which is referred to suitable persons among the neighbouring citizens and among the faithful.[3]

A few cases are also related in the succeeding centuries.

[1] *Cod. Theod.*, tit. i., tit. iv. *de jud. episcop.* [2] *Leonhardi*, p. 20.

[3] Ut per idoneos circa vicinos et fideles nostros, fideliumque nostrorum homines plenissime sub sacramento inquiratur et ad finem vite usque. (*Leonhardi*, vol. i. p. 20.)

In the thirteenth century they are the most common; and various leagues are formed during this period among the free cities and others, for mutual support and defence, all of which contained provisions for settling disputes, feuds and contests by arbiters.

The Forms of Arbitration.—These present a remarkable evidence of the religious sentiment working. Thus in the following, from Martene, quoted by Digby, "I, Henry, by grace of God bishop of Liege, mindful, nay solicitous of our Lord's example, who, coming into the world, brought peace to men of good will, and who, departing from it, left peace to his disciples, make known to all, present and future, how the contention between the Church of St. Peter of Liege and the Monastery of St. Hubert shall be decided," etc.[1]

Or this in 1100 A.D.: "As the state of the whole Church is consolidated by the pacific bonds of Charity, and as the unity of holy charity is dissipated by the pestiferous scandal of dissensions, whoever wishes to come to the vision of eternal peace, must of necessity study with all diligence to keep peace, if possible, with all men, and especially with brethren; therefore we, the Canons of the Church of M——, loving peace and concord, and desiring to take away from the midst of us the evil of discord, have put an end in this manner to the dispute between us and the Monks of St. Vincent," etc.[2]

This form breathes a like spirit. It is found in the pact of reconciliation between Henry, Archbishop of Trêves, and Theoderic, Abbot of St. Matthew, and a certain monk at Rome. "The pacific hearts of those persons enlightened by truth and by the doctrine of Christ teaching peace to men, though sometimes liable to be

[1] *Mor. Cath.*, 3, 82.

[2] *Ap. Martene.* (Digby, 2, 83.)

torn by the enemy of the human race, sowing the seeds of hatred, yet in the process of time, we are sure to expel the darkness of that chief maligner, and to recover peace, which puts an end to all strife."[1]

A striking instance of arbitration is given in the Rhenish League (1254 A.D.), which stipulates with its confederates, that in order to remove every occasion for contest and every source of discord, they should each choose four men who should together amicably decide all questions which arose between them.[2] Many cities, knights and parishes united with this confederation on these conditions. A characteristic instance of the use of *Austräge* appears in the sixteenth century, when a contest arose between the Schwabian League and the rebellious peasants of Baiersfurth (1525 A.D.), where each party were to choose two arbiters of honour and position, who were to be laymen.[3] Another also is mentioned in 1324, when a very ancient feud between the Archbishop of Mainz, Count of Busdeck, and Count John of Nassau, with the Landgraf of Hesse, was settled in this way; and again where (1350 A.D.) a dispute between the Emperor and the Count of Brandenburg was thus reasonably and peacefully closed.[4]

These courts of arbitration came first to assume a fixed and legal position under Maximilian I. (about 1500 A.D.); and thus were the foundation of the Austrägal Court of the German Confederation in modern times.

In 1495, Maximilian put under the ban of the empire, and fined to the amount of 2,000 marks gold, every city or individual who accepted or gave a challenge to private

[1] Quoted by Digby. (3, 83.)

[2] Ad removendum autem omnem litis occasionem aut discordia fomitem . . . quatuor viros inter nos elegimus, etc. 'Quoted by Leonhardi, vol. i. p. 26.)

[3] *Leonhardi*, vol. i. p. 45.

[4] *Ibid.*, vol. i. p. 24.

war. This was the formal, though not the final, close of the right of "diffidation,"[1] as it was called.

Such then was the arbitration of the Middle Ages. In other words, the Christian principle, aided by self-interest, put an end during those centuries to private war in Germany; it lingered, however, till the end of the sixteenth century.

In Spain and Italy, it was also abolished by the combined influences of the Church and of mercantile society; in the former, Charles V. (1519) enforcing by a special law all previous prohibitions of it.

In Iceland the Gragas hand down to us a form of anathema against whoever shall break the Peace of God. "Let him be proscribed with celestial anathemas, wherever men pursue the wolf, or Christians visit the Church, or pagans make sacrifice, or mothers give birth to infants, or infants call upon their mothers, etc., let him be accursed!"

Here, too, as in other countries, Christianity aided to bring order out of chaos.

[1] Du Cange (*Diffidatio*). Fiebant etiam diffidationes plerumque scripto ad hostem modo. The word implied a breaking of faith or peace; and thus war between individuals.

Grotius defines *diffidare* as "to declare war." (3, 9.)

CHAPTER XIV.

WAGER OF BATTLE AND ORDEAL.

ONE of the grandest fruits of the human intellect and conscience combined has been the system of the Roman law. It carried the principles of justice and reasonable administration to the remotest and wildest tribes of the empire, and everywhere, to a certain extent, substituted law for force, reason for passion, and equity for abuse and injustice. Whatever were the inconsistencies of its practical execution, and the abuses of its administration, it rested on some of the sublimest principles attainable by the human reason, and exerted a most profound influence on the progress of mankind. We have seen, however, how ineffective Roman law was to eradicate some of the worst abuses of antiquity, and how much Christianity modified it under the later emperors.

With the rise of the northern barbarians and the dismemberment of the empire, this grand work of antiquity was submerged by the current of barbarism and superstition, and the progress of the world, in regard to right-reason and equity, was put back for centuries. In this retrogression the Christian religion had no share. Its principles are in harmony with the best of the Stoical jurists, and the rules of equity and fairness which form so large a part of the system are such as the Christian faith especially commends. The Church, however cannot claim any such credit. It did indeed do great service in

repressing among the German and Keltic tribes, violence, cruelty, and lust, as we shall abundantly prove; it steadily resisted some of the worst tendencies of the Roman law; but it permitted and encouraged the childish superstition which for ages substituted the compurgators' oath, and the ordeals of cold water, red-hot iron, the cross, and the sacrament, for the grand principles of evidence of this great body of law; covering Europe with relics of a childish age and retarding human progress for hundreds of years. The great principle of the Stoical jurists, that the defendant is acquitted if the accuser do not prove his case,[1] was reversed for almost a thousand years in Europe, and the burden of proof was thrown on the accused by innumerable superstitious conditions and observances. Instead of the old Roman rule, that a negative need not be proved, was adopted the opposite maxim, and the greater portion of the tests required the negative side to be made evident.[2]

It is true that the Church often opposed ordeals, but it finally surrounded them with every ceremony to make them impressive, and in many cases required them as religious obligations.

In another of the great abuses of the Middle Ages, the "wager of battle" to decide disputes and legal differences —a relic of barbarism which lasted till this century in England—the Church has a better "record," and the spirit of Christianity had much to do with its final disuse and abolition. But that for a thousand years, in Europe, a title to the ownership of real estate, or a legal difference, could be settled by duel, under the very shadow of the Church, shows how slow was the progress, and how feeble the influence, of the Christian Faith.

[1] Accusatore non probante, reus absolvitur.

[2] Lea. *Superstition and Force.*

One legacy Roman law left to the world, which has been a storehouse of curses and evils, the use of torture for the accused and for witnesses. This horrible enormity, which so shocks all sentiments of justice and humanity, endured in Europe from the time of the Twelve Tables to the present century. Every principle of Christianity is against it, and the power of this Religion has finally eradicated it; the Church, for several centuries being more inspired with its faith, opposed it, but at length, as we shall see, in the interests of bigotry, accepted this bequest of German barbarism and Roman law, and inaugurated an era of cruelty and injustice rarely surpassed in the world's annals. The Inquisition is the great blot on the historical Church. For centuries all principles of justice, reason, and humanity were forgotten, and the name of the Teacher of love became the cover for deeds of cruelty and injustice, equalling the worst under Greek and Roman faiths. As the study of the Roman law revived in the twelfth and thirteenth centuries, this evil feature was eagerly adopted in the combined interests of centralized power and of ecclesiastical superstition. The commercial spirit and the spirit of the free communes, struggled against it, but it was only uprooted by the gradual spread of Christian principles.

Wager of Battle.—Tacitus says of the warlike tribes who are the progenitors of the most vigorous races of the present day, that they believe "God is especially present with those in battle."[1] Two hostile tribes, before engaging in hand-to-hand struggle, frequently deputed a courageous warrior from each to contend for the cause at issue, and the result was thought to show on which side the god of battles inclined. The combat, whether between two

[1] Deum adesse bellantibus credunt. (*Germ.*, 9.)

or many, seemed in its uncertain issue to be especially connected with unseen powers,[1] and the consciousness of rectitude, no doubt did often strengthen the arms, as the conviction of guilt would weaken the muscles, of one or the other combatant. The single combat, to the minds of the northern races, became the great test of truth. This was especially the fact after the experience of general perjury and falseness, introduced by the ancient custom of the compurgators' oath. Under this peculiarly Teutonic custom, which long remained in English jurisprudence under the name of "wager of law," a person accused of a crime appeared to deny it surrounded by a number of compurgators, who swore not to their knowledge of the facts, but as partakers in the oath of denial.[2] This legal practice, which existed in Europe as late as the sixteenth century, offered irresistible temptations to false swearing, and to the bold and honourable Northman, a usage which tested the truth by his own right arm and at sacrifice of his blood seemed infinitely preferable to this taking refuge behind the oaths of associates. Wager of battle took the place of the compurgators' oath in both civil and criminal cases. It suited the fierce habit of the German and Keltic tribes to decide doubtful cases by the stronger hand; and the settlement was in harmony with that singular defect of barbarian jurisprudence for a thousand years in Europe (of which we have already spoken), which, above all, showed the loss of the influence of Roman law upon civilization—namely, the throwing the proof of a negative on the accused.

Under the compurgators' oath, the wager of battle, ordeal

[1] An old German proverb said: "Davon sollen wir Gott getruwen, das er den Kampf nur nach Recht sheyde."

[2] Lea, *Superstition and Force*, p. 24. Reeves' *History of English Law.*

by fire or water or the sacraments, and the system of torture through so many centuries, Europe forgot the rules of equity and the maxims[1] of the Stoical jurists, and threw the great burden of proof on the defendant. Centuries of injustice to unfortunate persons in every portion of Europe prove what harvests of wrong a single unjust principle will sow in the world, while they measure the blessings which the noble ideas of the Stoical jurists have scattered through every people which has felt the influence of Roman law.

Wager of battle is to be distinguished from the duel, though eminent writers confuse them. It is essentially a judicial trial; like war, an appeal to the god of battles, conducted under given ceremonies and conditions, where the penalties were fixed and legal. To nearly all Europe outside of Roman law, it was as natural once to determine a title to real estate, or a question of law and evidence, or matters of mortgage or debt, or questions concerning service or slavery, or the guilt of a criminal charge, or innumerable similar questions, by single combat, as it is now by juries, courts, and arbitration.

Nearly all the tribes which overthrew the Roman empire held to this practice; it belonged to the Keltic, Slavonic, and German races. Singular enough, it is not found in the Anglo-Saxon or Anglo-Danish Codes, and is believed to have been introduced into England by William as a Norman practice. The absence of mention of the judicial combat in the laws of the Anglo-Saxons is not, however, conclusive evidence against its practice.[2]

The Goths, who were more under the combined influ-

[1] . . . cum per rerum naturam factum negantis probatio nulla sit. (*Const.*, 22. *De prob.*, iv. 9. Quoted by Lea.)

[2] An apparent allusion to judicial combat occurs in the laws of Henry I. (*H.*, 1, 92.)

ences of Roman law and Christianity, do not appear to have retained the trial as judicial. The practice gained its greatest power in the custom of challenging witnesses. Any litigant finding his case going against him, could accuse a witness of perjury, and challenge him to the combat, thus adjourning the case and deciding it. This privilege was finally extended to the power of challenging the court itself; and the extraordinary spectacle was presented of a defeated suitor fighting with the judge who had decided his case adversely.

The mode of conducting these combats will, perhaps, be best shown by referring to the English practice. In the thirteenth century, the accused had the right to choose only in doubtful cases, between trial by jury and combat. The latter for a long period determined all questions of fact; and in the reign of Henry II. it decided in pleas concerning freehold, and in writs of right in regard to land or goods sold, debts upon mortgage or promise, sureties denying suretyship, validity of charters, manumission of serfs, questions concerning service, etc., etc.[1]

According to the English law, the defendant in doubtful cases could choose his trial, either *per corpus* or *per patriam*, by battle or by jury. But in certain cases the justices had the right to control the mode of trial: thus, if a person was accused of poisoning another, he was compelled to accept the wager of battle or to confess; and again, other cases were too clear to admit of risking any doubtful decision. When the trial by battle had been decided upon, the defendant gave security that he would defend his case, and the plaintiff that he would maintain his appeal. Each made oath; the plaintiff in a form of this nature: "Hear this, O man! whom I hold by the hand, called John by the name

[1] Reeves' *Hist. of English Law.* See also *Mirror of Justices.* (Trans. by *W. H.*, 1768, p. 160.)

of baptism, that thou art perjured because thou didst wickedly and feloniously kill my brother, etc., etc., and this I saw, so help me God and these Holy Gospels." [1]

Both parties were then committed to two knights or "other lawful men" to lead them to the field assigned. Each then took another oath of innocence, and, after certain ceremonies, engaged in combat. If the defendant supported the combat all day till the stars appeared, he was acquitted. If the plaintiff was defeated he suffered capital punishment under certain circumstances and forfeited all his goods, both his own and those which would come to his heirs. If he withdrew his charge when he appeared on the field, he was committed to gaol.

In cases of suits in regard to titles of land, the form of oath was thus: "I am ready to prove it by my freeman, John, whom his father at his death-bed enjoined by the duty he owed him, that if at any time he should hear of a suit for this land, he should hazard himself in a duel for it, as for that which his father had seen and heard." [2]

Glanville gives the following form in a suit against a tenant: "I demand against this H., half a knight's fee or plough-lands in such a village, etc., and this I am ready to prove by my freeman, I., and if any accident happen to him by such a one, or by a third, etc." [3]

The tenant had the right to defend himself upon the the king's grand assize, and so prove his right to the land.

The *Mirror* says: "In personal combat for felony none can combat for another, but in actions personal it is lawful to make battle by their bodies or by loyal witnesses." "The battle of two men sufficeth to declare the truth, so that victory is holden for truth." [4] "And in cases where

[1] *Bracton.* [2] *Reeves. Bracton.*
[3] Beame's *Glanville*, p. 41.
[4] *Mirror of Justices.* A. Horne, trans. 1646, pp. 155, 158, 159.

battle could not be joined, nor was there any witness, the people in person acting were to help themselves by the miracle of God in this manner, as if the defendant were a woman."

Green, in his History of England, gives a striking instance of the wager of battle and its effects.

"At Leicester," says the historian, "one of the chief aims of the burgesses was to regain their old English jury trial (or practice of compurgation) which had been abolished by the Earls in favour of the foreign trial by duel. It chanced, says a charter of the time, that two kinsmen, Nicholas the son of Acon, and Geoffrey the son of Nicholas, waged a duel about a certain piece of land, concerning which a dispute had arisen between them, and they fought from the first to the ninth hour, each conquering by turns. Then one of them fleeing from the other till he came to a certain little pit, as he stood on the brink of the pit and was about to fall therein, his kinsman said to him, 'Take care of the pit, turn back lest thou shouldest fall into it.' Thereat so much clamour and noise was made by the bystanders and those who were sitting around, that the Earl heard these clamours as far off as at the castle, and he inquired of some how it was there was such a clamour, and answer was made to him, that two kinsmen were fighting about a certain piece of ground, and that one had fled till he reached a certain little pit, and that as he stood over the pit and was about to fall into it, the other warned him. Then the townsmen being moved with pity, made a covenant with the Earl that they should give him the pence yearly for each house in the High Street that had a gable, on condition that he should grant to them that the twenty-four jurors who were in Leicester from ancient times, should from that time forward discuss and decide all pleas they might have among themselves."

The customs of continental Europe varied somewhat from the English in regard to the judicial combat and its results, but it is not necessary to particularize them. Throughout the whole Christian world, for many centuries, the personal battle was the final decision of cases of law. Beginning with criminal cases, it was soon transferred to civil, and it survived in parts of Europe, at least nominally, to the present century. Its great power in the Middle

Ages was as one of the privileges of the fighting class, the feudal aristocracy, while it appealed to the superstition of all classes.

In the struggle everywhere between the crown and the nobles, and in the growing influence of Roman law after the thirteenth century, this was upheld as one of the institutions which resisted the Roman tendency to centralization and royal encroachment. Its great enemy was the new spirit which Christianity had spread abroad in the world, and which thus far had especially imbued the commercial classes. These everywhere opposed trial by battle, and one of the privileges granted to commercial communities was often freedom from this necessity.[1] These communities were also especially influenced by Roman law, and in the Admiralty law which they derived from it, there is no mention of trial by battle.

The Church in its attitude toward this barbarous practice was for a long time faithful to the spirit of its professed Leader. Both the Councils and the Popes declared boldly against it. In 1080 the Synod of Lillebonne adopted a canon, punishing by fine any of the clergy who should engage in these combats without special licence. The practice however was still continued, though condemned by Popes Innocent II., Alexander III., and Clement III. Celestin III. even deposed the clergy who had engaged in it, while all these prohibitions were confirmed by Pope Innocent III. and the Lateran Council of 1215, and as late as 1492 the Synod of Schwerin published a canon prohibiting Christian burial to those who fell in such combats.[2]

[1] Ferrum . . . pugnam, aquam vobis non judicabit vel judicari faciet. (From a charter granted to Bari by Roger, King of Naples, 1132 A.D.) *Muratori*, quoted by *Lea*. See Muratori, *Ant. Ital.*

[2] *Lea*, p. 148.

Louis VII., in granting the privilege to certain of the clergy of exemption from this combat, said boldly, "We hold that these wicked habits should be uprooted from the foundation."[1] The power of Christianity tended naturally to do away with this relic of barbarism, and where it was freshly introduced at once affected legislation.

One of the best known arguments against the practice was written by St. Agobard, Archbishop of Lyons, as early as 826 A.D., in a treatise entitled, "Liber contra judicium Dei."[2] In his letter to the Emperor he says, "The faithful mind must not suppose that Almighty God desires to reveal the secret things of man by hot water or hot iron, much less by cruel battle."[3] It is a foolish and proud presumption to suppose that the Divine judgments can be manifested by battle.[4] "Such contests are strongly opposed to Christian simplicity and piety and adverse to the doctrine of the Gospels."[5] All these efforts of the Church did not however prevent its spread through Europe. The first code in which the judicial duel was forbidden was among the most warlike tribes of the German stock, the Norsemen of Iceland, about the same time with the introduction of Christianity (1011 A.D.). The Danes soon imitated the Icelanders. Both reforms were clear fruits of the doctrine of Jesus. Prince Luitprand, in his laws of

[1] *Lea*, p. 148. Tenemus pravas consuetudines fundetus extirpari. Duellæ et aliæ purgationes vulgares prohibitæ sunt.

[2] See St. Agobardi, *Ep. Ecc. L. opera.* Parisiis, MDCV. Ad Imperatorem de duello, p. 103. Contra damnabilem opinionem putantium divini judicii veritatem igne vel aquis vel conflictu armorum patefieri. (p. 287.)

[3] *Ad Ludov. Imp. Epist.* [4] *De Pace.*

[5] Talia certamina vehementer contraria sunt simplicitati et pietati Christianæ et doctrinæ Evangelicæ nimis adversa. (*St. Agob.*, c. 7.)

Proinde experimenta hæc appellata fuere Judicia Dei quasi ad omniscientis Judicium controversia deferretur et inde justa sententia expectanda foret. (Muratori, *De Judiciis Dei.*)

the Langobards,[1] even earlier (712 A.D.), protests against this settlement of disputes, though he avows himself powerless to prevent it, and calls the law, "impiam legem."

Another legal measure taken against it was by the Emperor Frederick II. in 1231, in his Neapolitan code; he pronounces the trial by battle as more a kind of fortune-telling than legal proof, and equally inconsistent with common law, nature, and the principles of equity.[2]

The Emperor Rudolph of Hapsburg, in his charter to the Duchy of Styria, in 1277, forbade the wager of battle. Other princes also prohibited it. Alfonso the Wise of Castile, in his celebrated code, *Siete Partidas*, stigmatized the combat as an "effort to tempt the Lord our God." [3]

The Duke of Burgundy, Philip le Bon, abolished the wager of battle, and in his code of 1459 there is no mention of it. In Hungary it was prohibited in 1492, and in Italy in 1505.[4]

The Christian spirit, as affecting the imperial Roman code in regard to gladiators, worked upon the Middle Ages with respect to the "champions" employed in these judicial combats. All the contempt and disabilities thrown by the Christianized Roman law on the former, were transferred by those following Roman legislation to the hired fighters in these duels.[5] They were held incapable of being witnesses or of succeeding to property, and even their children were disgraced.

[1] If by respect for the usages of our Langobard realm we cannot forbid the judgment of God, it none the less appears to us uncertain, having learnt that many persons have lost their causes unjustly by an impious combat. (Quoted by Lea, *Lex Long.*, p. 63.)

[2] Non tam vera probatio quam quædam divinatio . . . quæ naturæ non consonans, a jure communi deviat, nequitæ rationibus non consensit. *Lea*, p. 149.

[3] Que quiere tentava Dios nuestro Señor.

[4] *Lea.* [5] *Ibid.*

All these influences, however, were slow in uprooting this unreasonable practice among the nations of Europe. It endured in Russia till the middle of the seventeenth century. It was not abolished in England in civil cases till the reign of Elizabeth. In 1571, in order to determine a disputed title to real estate, Westminster Hall was forced to adjourn to a duelling ground at Tothill Fields, "not without great mental disturbance of the learned lawyers" (non sine magna jurisconsultorum perturbatione). All the forms of combat were passed through, but the contest was compromised.[1]

In criminal cases, a man indicted for a capital offence, was allowed to confess his crime and to charge any one as accomplice. This appeal was usually decided by wager of battle. In 1539 there was legislation on this, and even in the seventeenth century instances occurred of the judicial duel; Sir Matthew Hale, at the close of the century, speaks of it as "an unusual trial at this day." Sir Thomas Smith, as late as near the close of the sixteenth century (1570–77), says of the judgment by battle: "This at this time is not much used, partly because of long time the Pope and the clergy, to whom in time past we were much subject, always cryed against it as a thing damnable and unlawful," and partly, as he explains, because of the natural change in manners and customs. "But," he adds, "I could not learn that it was ever abrogated."[2] And of the appeal to battle in murder cases, he says: "The Popes of Rome, and men of the Church who of long time have had dominion in our consciences, and would bring things to a more moderation, have much detested this kind of triall and judgment. . . . This kind of triall of long

[1] *Spell. Gloss.*, p. 103.

[2] *The Commonwealth of England*, 1589, p. 100.

time hath not been used. . . . Nevertheless, the law remaineth still and is not abolished."

In 1775, one of the grievances of the American colonies was being deprived by English legislation of the right of wager of battle in criminal cases; that is, a man acquitted of a charge of murder could be again prosecuted by the nearest relative, and the question was to be determined by the judicial duel.[1] The English Liberals denounced, in the strongest terms, this oppression of the colonists. Dunning, afterwards Lord Ashburton, described the appeal for murder as "that great pillar of the constitution." "It is called," he said, "a remnant of barbarism and Gothicism. The whole of our constitution, for aught I know, is Gothic. Are you then to destroy every part of that Gothic constitution, and set up a *Macaroni* one instead."

Burke said, "If there is an appeal for rape and robbery, you ought to have one for murder. . . . I allow that judicial combat was part of this appeal—which was superstition and barbarism to the last degree. Yet I cannot consent that the subject should be dealt with piecemeal." Wedderburn, in reply, said on behalf of the ministry: "They allow that the appeal for murder is only an effort for a private revenge, that it may lawfully be stopped at any time by the appellant on the receipt of a sum of money, and that if it proceeds the appellor or the accused, by throwing down his glove, is entitled to have his guilt or innocence determined by a deadly combat," etc., etc. The clause objected to in the Bill was subsequently withdrawn by the ministry. The appeal for murder was attempted also previously (1699), in the case of Lord Cowper's brother, but was quashed on account of informality. Lord Holt

[1] Campbell's *Lives of the Chancellors of England*, vol. vi. p. 112.

declared it "a noble badge of the liberties of an Englishman." [1]

In 1818, in England, a probable murderer, acquitted on a jury trial, was challenged by a brother of the girl murdered, when he pleaded "not guilty, and I am ready to defend the same by my body." The Chief Justice sustained his right to this mode of trial, and but for the challenger's withdrawing, the world would have seen a wager of battle in the nineteenth century before the Lord Chief Justice of England.

In the next year, by Act 59 Geo. III, cap. 46,[2] this relic of ante-Christian barbarism was abolished, and law finally substituted for force between individuals in Great Britain.[3] The wager of battle or appeal of murder appears even to have been inherited in American legislation,[4] and Lea states that it probably exists legally in several of the United States.

The reflection of the reader will no doubt be of wonder that such a barbaric folly and abuse should have lasted so long under even the apparent reign of Christianity and right reason. But in all matters connected with the instincts of pugnacity and the fiercer passions, the teachings of Christ work very slowly. They are just beginning in the nineteenth century, their appropriate and lasting work. As we shall show later, their influence is only now felt on the relations of nations and the passions of war. The

[1] *Campbell*, vol. iv. p. 275.

[2] All appeals of treason, murder, felony or other offences shall cease, determine and become void, and become entirely void, and be utterly abolished, and in any point of right, the tenant shall not be received to wage battel nor shall issue be joined nor trial be had by battel in any writ of right. (59 Geo. III. c. 46.)

[3] *Lea*, *Campbell*, *Reeves*, and others; the case of Ashford *v.* Thornton.

[4] *Stat. of S. Carol.*, vol. ii. p. 715, note.

to it as still practised. Throughout the same century it was gradually done away with in Italy, Iceland, Norway, and Sweden. In France it fell into disuse about the same time; but in Germany the superstition of the people resisted the mandates of the Church, and even in the fourteenth century the practice was not uncommon. In Spain, the celebrated code of Alfonso the Wise (1260) had expressly prohibited it; but even in 1322 a Church Council was obliged to threaten with excommunication all engaged in administering this test.[1] Lea, in his admirable work from which we have quoted so often, says that the well-known Muratori affirms his belief in the ordeal, and that it was common in Transylvania in the seventeenth century, and in the eighteenth century in West Prussia.

The treatment of witches in the early history of the United States must have contained a large element of the belief in the supernatural "judgment of God." Even in 1815 there was a trial for witchcraft in Belgium, and in 1836 the population of Bela, near Dantzic, twice plunged an old woman accused of being a sorceress, into the sea, and, as she rose, she was pronounced guilty and beaten to death.[2]

Other causes besides the influence of the Church or the spread of Christian ideas tended to remove this abuse—the revived influence of the Roman law, and the spirit of the mercantile communes and commercial leagues, who were more imbued with correct principles of evidence, less affected by superstition, and more inspired by religion. The early codes of commercial law make no reference to ordeal.[3]

[1] *Du Cange*, Ferrum candens. *Lea. Muratori, Ital. Antiq.*

[2] *Lea.*

[3] I desire to make especial acknowledgments for the assistance I have derived in these chapters from Lea's admirable work on *Superstition and Force.*

The abolition of ordeal is not one of the most undisputed victories of the Christian religion. We can only say with confidence, that as this Faith imbues men with benevolence and the desire to render to all their due, the injustice, cruelty, and absurdity of such means of arriving at truth become more apparent.

CHAPTER XV.

TORTURE.

THE Roman law, in recognising one system of injustice, permitted of necessity the cruel and unjust proceedings legally connected with it. Slavery was assumed and acknowledged as legal, and with it, the torture to exact the truth from one who was in the view of the law scarcely a human being. Even the Stoical jurists allow torture to a slave who is a witness. But such an injustice once suffered to exist would be easily propagated to other classes. It was first applied to freemen suspected of crimes against the State or the emperor; and, under the imperial legislation of Rome, was employed against many offences of free-born Romans. Still, under the Roman practice, there were many safeguards for the accused. The plaintiff was obliged to inscribe himself formally, and was exposed to the *lex talionis*, or reprisals, if he failed to prove his charge. Under Constantine, a person accused of treason, whatever his rank, was liable to torture, but accusers and informers, if they could not prove their charge, were equally liable to this penalty. These provisions were preserved by Justinian.[1] Even freemen were tortured as witnesses, and so enlightened a ruler as Justinian could order a rod to persons suspected of false witness, in order to extract the truth. It is certainly one of the extraordinary per-

[1] 13 *Theod. Cod.*, ix. 8.

versities of the human reason, that for so many centuries in Europe, alike under Roman law and the Christian Church, the innocent could be exposed to frightful pains in order to obtain evidence; and the accused, who might be innocent, were given up to fearful agonies to compel a confession, which might be the result of fear or pain. This savage procedure was unknown to the great race related to the European races—the Hindoos—and was not a part of the code of the people who, through Christianity, have so much influenced modern progress the Jews. The northern barbarians, owing to their sense of individual independence, did not usually permit the torture of freemen, but only that of slaves; and then under strict conditions. The wager of battle, the compurgators' oath, and the ordeal took the place of torture, as a means of obtaining truth. The Gothic tribes, who were more influenced by Roman legislation, early adopted the practice, though with many of the Roman protections for the accused.

Christianity in its essential spirit was utterly opposed to such a cruel and unjust practice. One of the wisest kings of Europe expressed in his code the foundation principle of this Faith, when he said, "The person of man is the noblest thing on earth."[1] Yet even Alfonso the Wise was obliged to admit torture in his legislation, though he modified its effects by provisions which were afterwards imitated throughout Europe. No confession under torture was held technically valid; the victim was sent back to prison; he was again brought before the judges; if he persisted, he was condemned; if he recanted, he was again tortured, and these steps were repeated; the accused never being convicted except by free confession.[2] Even after that, if the

[1] La persona del home es la mas noble cosa del mundo. *Siete Partidas.*

[2] *Lea.*

judges found reason to consider the confession an effect of fear or pain, he might be acquitted.

The history of the early Church, when perhaps the teachings of Christ were fresher to the minds of men, is full of instances of opposition to this cruel practice. But gradually, as the study of the Roman law revived in the thirteenth century, and later, as the spirit of bigotry increased, torture, and all the dark accompanying practices were borrowed from the old code, and employed by the Roman Church in the processes of the Inquisition. Under this new spirit of persecution they became tenfold worse than they had ever been under Roman law. For centuries, the very light of justice passed away under the shadow of the Inquisition. Men were tortured on the feeblest suspicions; all the maxims of Roman equity were forgotten; their confessions were allowed to implicate others, and often they charged themselves when innocent, to escape further pain. Agents were permitted to enter their prison-cells to worm out their confidence, and even judges falsely promised them mercy to win a confession.

The following were some of the tortures habitually used in Europe for hundreds of years: "The *strappado*, so common in Italy, and which is yet forbidden under Roman law; . . . the vigils of Spain, which oblige a man to support himself by sheer muscular effort for seven hours, to avoid sitting on a pointed iron which pierces him with an insufferable pain; iron stools heated to redness on which we place poor half-witted women accused of witchcraft, exhausted by frightful imprisonment, rolling from their dark and filthy dungeons, loaded with chains, fleshless and half-dead, and we pretend that the human frame can resist these devilish practices, and that the confessions which our wretched victims make, are true."[1]

[1] Nicholas, *Diss. M rale et jurid. sur la Torture.* (Quoted by Lea).

The *strappado*, to which allusion is here made, was a species of torture used to extract the truth from witnesses or accused persons. The hands were tied behind the back, with a piece of iron between them; a cord was fastened to the wrists by which, with a pulley, the unfortunate person was hoisted from the ground with a weight of 125 lbs. fastened to his feet. In extraordinary cases the weight was increased to 250 lbs. When the victim was raised to a sufficient height, he was dropped with a jerk which dislocated the joints, and this was repeated three times. The most agonising and efficacious of all torture was considered to be enforced sleeplessness. The person was placed between two jailors, who slept in alternate periods, but kept the unhappy victim awake for several days and nights.

In applying torture to those suspected of witchcraft, one judge (according to Nicholas) boasted of despatching nine hundred victims in his district in fifteen years; and another in the diocese of Como burnt one thousand persons in a year. The cruelty and arbitrary character of the system of torture reached such a degree in Europe, that intelligent persons decided, if chance should expose them to any suspicion, they would at once admit every charge, preferring a speedy death to these long-continued agonies.

Under the German Code after the sixteenth century, the rule of the Roman law was followed, of beginning with the weakest in torture. If husband and wife were to be tortured, they commenced with the wife. Von Rosbach warns the tribunals that their greatest fault was in looking only at the testimony adverse to the accused, and that they "used torture as though nature had created the feelings of prisoners to be lacerated at will."[1]

As soon as a charge was made, the judges began by

[1] Quoted by Lea.

torturing all who were suspected, without waiting to ascertain if any crime had really been committed. The accused generally did not see a copy of the accusation; often was not allowed to be heard in defence, and was tortured at once after the adverse evidence was heard. Even the right of appeal was evaded, by the judges sending the accused to the rack without a preliminary formal order. The rule prevailed that torture should not be so prolonged as to endanger life and limb, but, in fact, the unfortunate victim was often crippled for life under a false accusation. Von Boden says, that the devil himself could not invent any worse torment for the human body than these judges often used on the innocent.[1] The judge himself was obliged to be present during the torture, and naturally grew callous to the misery he inflicted. He was liable to indictment if the prisoner did not confess, so that every motive urged him to torment the miserable sufferers. It is said that in these refinements of cruelty over nine hundred different instruments for inflicting pain were invented and used. Torture was permitted even after conviction, to prevent appeals; and if the unhappy person asserted his innocence at the place of execution, he was hurried back to the rack again.

One candid magistrate of Milan is reported by Nicholas to have tested the system, by killing a favourite mule and allowing the accusation to fall upon a servant. The man denied the offence, was put to the rack, and confessed; and subsequently, after the torture, persisted in the confession. The judge, it is said, resigned his office and became a cardinal.

In France, at the close of the fifteenth century, all the

[1] Sic adhiberi soleant ut diabolum ipsum asperius quid quo corpori humano in hac vitâ noceat, excogitare posse dubium sit. (Quoted by Lea.

worst accompaniments of this cruel practice were in continual use; the secret investigation of criminal cases; the separate and secret examination of witnesses; the prisoner not being informed of the accusation against him, nor allowed an opportunity of preparing a defence. The principle of French legislation in this matter in the sixteenth century being, as Lea well puts it, that it were better that one hundred innocent persons should suffer, than that one guilty one should escape.

The old maxim of Roman law, that no one who had confessed his guilt should be examined as to the guilt of another accused, was forgotten, and the new method was the application of the rack to compel a confession as to the guilt of others. This continued even under the reign of Louis XIV. Silence under the agony inflicted was not considered evidence of innocence; so that a man not found guilty after torture, could be punished for some other offence of which he had not been convicted. This horrible condition of legislation endured in France till the eighteenth century.

In Spain, as might have been expected, this barbarous practice and all the abuses of secret inquest had their especial seat. The dreadful procedure of the Inquisition was transferred to secular legislation. Torture was adopted even on charges of theft or counterfeiting, and for all weighty offences. Evidence sufficient to justify it was considered to lie in common report, or in unexplained absence before accusation, or in prevarication at examination, or even in silence and pallor.[1] The magistrates went so far as to employ the lot or divination to obtain proofs sufficient to justify to their minds the rack or the strappado. Witnesses were not spared either in civil or criminal cases.

[1] Deinde a pallore et similibus oritur judicium ad torturam secundum. (*Von Rosbach.*) *Lea*, p. 358.

In general, torture was seldom practised in their early history by the nations where jury trial prevailed and evidence was open, and where Roman law had little or no influence. In the Danish and Swedish Codes, from the fifteenth to the end of the sixteenth centuries, when this cruel process was so common in Europe, it is not mentioned. It does however appear very early in the Icelandic Code, but seems afterwards to have fallen into disuse.

Torture in England.—It is the boast of the common law of England, that this practice was never recognised in its provisions. Among the Anglo-Saxons, the ordeal, the wager of battle, and the gradual growth of the jury took its place.

By the laws of Henry I. it is laid down that no credit is to be given to a confession about another's guilt, and that a confession extorted by fear or fraud is invalid.[1] It is thought that the expression in Magna Charta, "No freeman may be arrested or imprisoned except by legal judgment of his peers,"[2] may refer to this power of magistrates and kings, so freely exercised on the Continent at that time.

In the fourteenth century, this cruelty was almost unknown in legal proceedings in England. The Archbishop of York states this publicly, and asks in a letter, which has been preserved, what he shall do in regard to the examination of certain knights templar.

Yet torture was occasionally employed during succeeding reigns, and gradually, as the royal prerogative was strengthened, it gained ground. Under Henry VIII. it was held that a royal warrant justified the use of this means of investigation and of secret inquest. Arguments were

[1] Nemini de se confesso super alienum crimen, credatur; confessio per metum vel per fraudem extorta, non valet." (*L. Hen. I.*, 5, 16.)

[2] c. xxx.

made against its practice during Elizabeth's reign, but still it was held that the royal command rendered it legal. Sir Thomas Smith says of torture in his time (1570): "Likewise torment of question which is used by the order of the civil law and custom of other countries, to put a malefactor to excessive paine, to make him confesse of himselfe, or of his fellows or complices, is not used in England; it is taken for servile. . . The nature of Englishmen is to neglect death, but to abide no torment. . . Likewise confession by torment is esteemed for nothing."[1] Even Lord Bacon, at as late a period as 1619, recommended its use to King James. As was the experience in other countries, this method of examination was transferred from cases of treason and of offences against the State, to ordinary offences—even to the examination of persons accused of theft and horse-stealing.

After 1640, pain as a means of investigation was never applied to those accused of political offences. The Rebellion put an end to such practices.

In Scotland the use of torture began somewhat late, after the fifteenth century, but it was applied fearfully, especially in the trials for witchcraft in the sixteenth and seventeenth centuries. It was not abolished in that country till after the Union, in 1709.[2]

The Opposition of the Church.—As we stated before, the Church in its early history was consistent with its doctrines in opposing this cruelty and injustice. Under the Merovingian line, torture was only exceptionally employed, except against scorcerers. A Church Council in 587 A.D. forbade by special decree every elder or deacon from being

[1] *Commonwealth of England* 1589, p. 100. See also Jardine *On Use of Torture, etc.*

[2] *Lea.*

present at the infliction of this pain.[1] Another canon (585 A.D.) prohibited any of the clergy from even beholding these agonies.[2] A prominent Bishop, Hildebert, in 1125, in a letter to his clergy, says, "To torment criminals, or to extort confession by torture, is not a part of the discipline of the Church."[3] The early Popes were not behindhand in their denunciation of the practice. Gregory I. in the sixth century speaks with contempt of a confession where the innocent are compelled to avow themselves guilty.[4] Nicholas I. in his Epistle to the Bulgarians, says that this is a process which no divine or human law can approve of, "for a confession ought not to be unwilling but spontaneous."[5] "Abandon all such practices," is his command. Ivo of Chartres, in the beginning of the twelfth century, proclaimed that the confession of the clergy, whatever they were accused of, should always be spontaneous, not forced.[6]

Fifty years later, Gratian proclaims that confessions must not be obtained by torments.[7]

This cruel practice was not adopted by most of the countries of Europe till the thirteenth and fourteenth centuries.

[1] Non licet presbytero nec diacono ad trepalium ubi rei torquentur stare. *Conc. Autiss.*, con. 33.

[2] Ad locum examinationis reorum nullus clericorum accedat. *Conc. Mat.*, ii. 1. (*Lea.*)

[3] Reos tormentis afficere vel suppliciis extorquere confessionem . . . est non ecclesiæ disciplina. (*Hild.*, Ep. xxx. *Lea.*)

[4] . . . noxios se fateri cogantur etiam innoxii. *Greg.*, lib. viii. Ep. 1, 3 c.

[5] Quam rem nec divina lex nec humana prorsus admittit, cum non invita sed spontanea debet esse confessio. (Ep. 97, 86.) . . Relinquite itaque talia. (Quoted by Lea.)

[6] Ministrorum confessio non sit extorta sed spontanea. (Quoted by Lea.)

[7] Confessio cruciatibus extorquenda non est. *Dec. cr.s*, xv. 6, 1. (See Lea.)

Italy, which was the centre of Roman ideas, was the earliest to employ it in obtaining evidence, and the last to abandon it. Frederick II. in his Neapolitan Code (1231) is said to have substituted torture for ordeal in judicial trials. In the thirteenth century the Church began to drift far from the principles of its Master, and to be imbued with a spirit of cruel bigotry. The Inquisition accepted torture and secret investigation as its appropriate implements; and Pope Innocent IV. ordered this process in the examinations for heresy. The influence of the Inquisition on secular law was widespread and most disastrous.

Two causes began now to spread abroad this cruel proceeding: one, the revived study of Roman law, and the consequent desire by the Royalist party through Europe to restore to imperial and kingly power its privileges—among them the right to obtain evidence by inflicting pain—and the other this terrible anti-christian spirit of the Church and the Inquisition.

The spirit of humanity taught by Christ, wherever it could struggle against ecclesiastical tyranny, opposed this barbarity through every century. As the Scriptures became more circulated among the common people after the fifteenth and sixteenth centuries, all men felt more of the compassion taught by Him, and this abuse seemed more and more a shame to the faith they professed. The influence of the Roman law indeed upheld it, and the bigotry of priests and cruelty of rulers, but the Teacher of love everywhere through the Gospels preached against it in the hearts of men. Nothing but His influence seems finally to have uprooted it among European nations.

The authors from whom we have quoted, A. Nicholas Von Boden, Bernhardi, are filled with the Christian spirit, and strike telling blows at the evil. The latter writer states that the abuse was abolished in Holland, because in Utrecht,

a man brought a false charge of theft against a shoemaker.[1] The workman was tortured, confessed, and was finally executed. It subsequently appeared that the accusation arose from the shoemaker's refusal to buy a pair of shoes from the man. Such instances were no doubt constantly occurring and aiding to bring Europe to right reason. This author says, that the system of torture ought to be cast out of the doors of Christianity, and that it is destitute of any appearance even of a divine test of truth.

It is but just to say that in these matters of humanity and public right, the sceptics were often in their practice nearer Christ than were the popes, bishops and clergy. The Christian spirit affected the ideas of those who were nominally unbelievers. The French free-thinkers and their followers opposed the use of torture with all their eloquence. Montaigne uttered his condemnation of it, Voltaire addressed (in 1777) an earnest appeal to Louis XVI. against it, and the philosopher king, Frederick the Great, made it the first act of his reign to abolish it (1740), though his humanity was not sufficient to prevent his using it on those accused of treason and rebellion against himself.

In Saxony, Switzerland, and Austria, it was abolished towards the end of the eighteenth century; in Russia it survived till 1801; in Wurtemburg and Bavaria it was in use in 1806 and 1807; in Hannover till 1822; and in Baden till 1831,[2] In France, the storm of the Revolution swept it away; and almost at the same time it came to an end in North Italy, but was used in the prisons of Naples and Palermo down to the middle of this century.

It is remarkable that, according to Lea,[3] instances of

[1] Quoted by Lea.
[2] *A Reading on the use of Torture, etc.* D. Jardine, London, 1837.
[3] Page 522.

judicial torture to extort evidence have occurred in Europe within a few years: one in Roumania in 1868, and the other in the enlightened Republic of Switzerland, in the Canton of Zug, in 1869.

The civilized world has happily for ever passed beyond this great abuse and injustice, which has caused such untold pain and misery, and has broken the courage and endurance of such countless numbers of human beings Unfortunately for the name of Christianity, the Church sustained and employed this diabolical system of cruelty and oppression. But the teachings of Christ, and the protests of many of His followers have opposed it in every age. As men have become more and more filled with His spirit, or indirectly influenced by Christian ideas, torture has disappeared, and is now as one of the horrible spectres of a dismal and bloody past. In non-Christian countries, however, it exists, but is gradually abolished as their codes of law come under the influence of the doctrines of Jesus. In one of the most civilized of these—Japan—it was formally abolished as a means of procuring evidence,[1] in 1873, —the new code being reformed after those of Christian countries.

[1] Reed's *Japan*. vol. i. p. 324.

CHAPTER XVI.

THE STRANGER'S RIGHT.

UNDER the old Greek and Roman habits of mind, the stranger was mainly looked upon as a barbarian and enemy.[1] Something of the same savagery, which in Stanley's travels through Central Africa made almost every new tribe he met with at once attack him like a dangerous wild beast, animated the ancient races, both barbarous and civilized, in their relations to foreigners, Stoicism indeed cultivated a more humane feeling among the learned and refined; but the masses of the people in the ancient world were full of prejudices and hostility against those not of their own race or country. It is true that the Roman empire, with its imperial unity, tended to melt different peoples together under one rule, and strangers and enemies gradually became only those outside of the limits of this grand domain. Toward those, however, the old barbaric feeling and custom were strong as ever. That expression in Plautus, "A man is a wolf to a man he does not know,"[2] is probably an echo of an old Roman proverb, and utters a common sentiment of the

[1] Hostis enim apud majores nostros is dicebatur quem nunc peregrinum dicimus. (*Cic.*) Aristotle says, Of all wars those are most necessary and just which are made by men against wild beasts, and next those made by Greeks against strangers, "who are naturally our enemies." (*Pol.*, li. 8.)

[2] *As.*, 2, 4, 88. Homo homini ignoto lupus, etc.

Italian peoples. When the Empire broke up and the Teutonic codes to a large degree controlled Europe, we see the revival of the inhuman spirit towards strangers, and at the same time the larger humanity taught by the Jewish Scriptures and by Christ, struggling with and mitigating the spirit of old and savage legislation.

That humane command of the Old Testament, "Thou shalt not vex the stranger" (Lev. xix. 33, 34), seems to have rung in the ears of almost every Christian legislator of the German, Keltic, and Anglo-Saxon tribes; and the spirit of the new Revelation is seen everywhere inspiring and teaching a broader humanity, though often in vain against the ingrained and inherited habits of barbarism.

There were indeed certain justifications of the old Teutonic dislike of strangers. The land of the tribe was held in common, and a stranger, as a lawless man, was out of connection with the community, with no possessions and no obligations; he was no doubt often a runaway, vagrant, or thief, or a disturber of the peace; if he came as a merchant he was outside of the "mutual pledge" system which bound, for instance, the Anglo-Saxons to good conduct. It followed almost naturally that the laws in regard to him were often very strict or cruel. According to the Burgundian law[1] he could be tortured under suspicious circumstances, and even one of Charlemagne's capitularies permits the same treatment. By a law of the Salian Franks, when a stranger wished to settle in a village or canton he was not permitted the privilege if a single resident opposed. If also within ten days any member of the tribe presented himself with witnesses, and summoned

[1] Quicumque hominem extraneum cujuslibet nationis ad se venientem susceperit, discutiendum præsentet ut cujus sit tormentis adhibitis fateatur. *Lex. Burg.*, i. 39, and Cap. 2 (803 A.D.).

him to quit the village, and this was repeated twice after the ten days, he was obliged to depart. If he refused, he was summoned to the *mallum*, and not only expelled, but compelled to abandon his property and pay a fine. In England, as we shall shortly show, a stranger who was accused of any crime must be at once put in jail; if he was found off from the four main roads and making no noise of bell, he could be killed as a thief; no one could harbour him more than three nights, and whoever did so even for that time was responsible for his good conduct. He was taxed wherever possible. Even as late as the time of Henry VIII. all foreign artificers were prohibited from working in the kingdom.[1] The Saxons are said to have sold into slavery a stranger who had no patron.[2] By a law of many German tribes, if a stranger had resided twelve months in a district he was safe; if he was guest of a member of the tribe, the host after three nights became responsible for him. The proverb was common, "Two nights a guest, the third night a servant." In Gaul, among the Keltic tribes, the stranger was equally held as one outside of the community and unable to own the property of a warrior. The early German codes soon begin to show the effect of the new spirit in this matter. The laws of the Bavarians of the twelfth century quote the Bible text in regard to vexing the stranger, and lay a heavy fine on him who shall plunder, sell, or wound a stranger, while a burdensome fine must be paid to the treasury for his murder.

That great legislator, Charlemagne, in 803, calls upon every one in his empire, as he would that Christ should be merciful unto him, not to refuse hospitality to strangers

[1] 32 H. VIII., c. 16.

[2] Peregrinum qui patronem non habebant, vendebant Saxonis. *Weginkordt.*

and travellers.[1] He directs all judges to give just judgment, and to make no distinction between the stranger and the citizen, because that is the true judgment of God.[2] No official is permitted to oppress strangers with taxes or any other burden.[3]

Alfred, in the Anglo-Saxon code, orders his subjects not to vex the stranger and far-comer, in memory of the Lord's people being strangers in the land of Egypt; and each of his successors repeats this injunction on religious grounds.

The ancient Hungarian law enjoins humanity towards strangers in that we ever have the example of the Master, and the command "I will have mercy and not sacrifice."[4]

Droit d'Aubaine.—One of the most remarkable instances of the continuance of a barbaric custom in a Christian country, down to modern times, has been the *droit d'aubaine,*[5] or stranger's right, in France. The stranger for centuries in France was looked upon in law as a serf, and treated accordingly. An *aubain,* or stranger, living a year and a day in a French community, and not professing citizenship or attaching himself to a baron, became serf to the seigneur on whose lands he resided. It was the fourteenth century before the strangers ceased to be regarded as bound to the soil in France, and features of the *droit d'aubaine* have survived to the present day. The

[1] Volumus ut infra regna, Christo propitio nostro, omnibus iterantibus, nullus hospitium denegat, mansionem et focum tantum. *Char.* 3 *Cap.*, and others.

[2] Quod justum est, judicate. Sive civis sit ille, sive peregrinus nulla sit distantia personarum, quia Dei judicium. (62.)

[3] 72, 9 c.

[4] Semper illud Domini exemplum, etc.

[5] Probably derived from Albanus, or Scotchman, as being the foreign people most often strangers in France. It may also be from *alibi natus.* Others give, Celt. *all,* autre; *bann,* juridiction, district, contrée, pays. (See *Hist. de la Cond. civ. d'Étrangers en France.* Par C. Demangeat, Paris, 1844.)

oppressive custom had indeed been lightened by the greed of the seigneurs for money obtained by selling their rights over foreigners, and by the power of the kings, who protected strangers in the interest of royalty against feudal barons. The Christian religion, too, softened, though for centuries it could not remove, the oppression. The absolute servitude of strangers was formally abolished from the thirteenth to the fourteenth century. In the earlier times the seigneur at the death of the stranger took, by law, all his inheritance. But toward the end of the thirteenth century, if he had left children, half the property was permitted to descend to them. Louis X. (1315) ordered servitude to be changed to freedom,[1] but the efforts failed against the struggles of the feudal gentry.

The *aubains*, or strangers, of the Middle Ages seem to have been in almost the same position with serfs. They were bound to the soil, and masters could pursue them if they ran away; they sold their rights over them like any other property. The stranger was obliged to pay dues to the baron; if married to a person of another class, he must pay a fine, and, if his marriage was without the consent of his master or seigneur his goods could be confiscated and the marriage declared null and void. In divers ways the unfortunate foreigners in France were plundered and taxed throughout the Middle Ages. They could not inherit or bequeath property. Even as late as the sixteenth century the *aubains* could not transmit property, except a fixed small sum, or succeed to an estate. In 1461, Louis XI. exempted from the *droit d'aubaine* and the correlated right of barbarism, the *droit de naufrage*—wreckers' right—certain large districts in Flanders and the adjacent regions. It was not till 1606 that England and France released merchants by treaty from these oppressive

[1] Servitude fust ramenée à franchise.

dues and exactions. Henry II., in 1554, expressly exempted Scotch merchants from the *droit d'aubaine*. Still with these various exemptions, the general law for centuries in France was that a stranger, if he did not recognise the seigneur on whose land he lived, could, after a year and a day, be arrested and his goods confiscated, or he be forced to pay a heavy fine. He became the man of the baron and must bestow on him a certain sum by will, or the baron inherited all his property. Even native Frenchmen wandering to some other than their native district were liable to become native *aubains*.

This odious right was finally abolished by the humane impulse of the Revolution in 1790; that is, strangers could transmit property to other than French children, but they were not permitted to collect property left to them in France, nor were they made equal with Frenchmen in regard to imprisonment for debt, the transference of property, or the ability to appear as plaintiffs in court.

It was not till this century (1819) that strangers in France were placed by other than treaty law on an equality with native Frenchmen, and allowed to receive bequests and to own real estate. In 1832 a still further improvement was made in their condition by their being delivered from imprisonment for small debts.

As regards foreign countries, these odious relics of a barbarous age were abolished by treaty in France, first in 1760;—the privilege of exemption being secured by the United States in 1778, and by Russia and England in 1787.

Similar inequalities in regard to strangers, derived from the ancient customs of half-civilized tribes and from feudalism, still exist under the common law of England, and have been continued in many of the United States. The right of a stranger to own real estate in most of the

American States is only given by special statute or on application to the court.

The struggle of Christianity against this spirit of intolerance is only seen in the early legislation of the German and Keltic tribes, because then the motive power was fresher and more distinctly expressed. But when Paul on Mars' Hill uttered to the race most proud of its blood in antiquity and who held all foreigners as barbarians, that watch-word of modern humanity, "God hath made of one all races of men," and when He repeated it in so many forms to the great conquering race of the past —the Romans—we may be sure that an idea from the great Master was thrown into human society which must everywhere break down the hatred of race to race.

As this humane principle became more an element in human progress, it was less spoken of as a religious influence. It entered into legislation silently, and after long struggles began the reforms which are not yet finished; for under the teachings of Christianity, there can be no unjust and oppressive discriminations made against the stranger and foreigner, but all nations are of "one blood."

CHAPTER XVII.

THE WRECKERS' RIGHT AND PIRACY.

OF all persons claiming the offices of common humanity, it would seem that the unfortunate sailor or stranger, wrecked on a foreign shore, was the one most innocent and most deserving. And yet in all ages before Christianity, and often since, either the shipwrecked mariner and traveller were held to be the slaves or captives of those who rescued them, or their property became lawful plunder of any into whose hands it fell. They were considered the outlaws of mankind.

The Visigoths, more than any of the German tribes, were at least externally influenced by the Christian principle, and their code showed one of the first efforts to do away with this barbaric practice towards the shipwrecked. Severe penalties were threatened against plundering the goods of wrecked vessels. The Anglo-Saxons too were somewhat touched with the higher humanity of the new Faith, and one law proclaims (about 978 A.D.) "Let every merchant-ship have frith (peace) that comes within port, though it be a hostile port, if it be not (storm-) driven! If it be (storm-) driven, and it flee to any peace-burgh, then let these men and what they bring with them have peace."

Henry I. (1130 A.D.) referring to the wreckers' right, says: "Hanc abhorrens consuetudinem," abhorring this

custom, he ordains a law, that whoever escapes from a wreck should be allowed to possess his property.

Richard II. (1190) proclaims that, having himself experienced the calamities of shipwreck, he does "for the love of God and the salvation of his soul demand safety and protection for all shipwrecked persons and their goods in whatever land or sea."[1]

The ancient mercantile community was the first to feel the new spirit of humanity, and their interests would naturally move them to resist barbaric practices. Every old mercantile code contains provisions against the ill-treatment of these unfortunate persons. The Code d'Oleron (dating before the fourteenth century) is full of honest indignation against those who injure the shipwrecked, and commands the plunderers to be half-drowned and stoned like dogs.

It is said to be "against the command of God the All-powerful, notwithstanding any custom or ordinance, to plunder the shipwrecked, and all such are accursed" (Art. 38); and whoever should put up false lights to mislead the unwary and thus cause disaster and wreck, ought to be bound in the midst of his house and fire to be set to its four corners and be burned with it, and the whole place be turned into a hog-yard.[2] Nothing however seemed to uproot this barbarous practice. In the tenth and eleventh centuries the Dukes of Brabant still claimed the right to plunder all persons who were so unfortunate

[1] Ricardus Rex jam expertus calamitates naufragorum, pro amore Dei et salute animæ suæ et parentum suorum quietem clamavit in perpetuum *Wrec* per totam terram suam citra mare, et ultra statuens; quod omnis naufragus qui ad terram pervenerit, omnes res suas liberas et quietas habeat. *Leg. Sax.*, Wilkins, p. 342.

[2] Et doibt estre lié à une esteppe en millieu de sa maison, et on doibt mettre le feu es quatres cornières de sa maison et faire tout brusler, etc. Art. 41, c. 8.

as to be cast on their coasts. The Council of Nantes (1127) thundered against it; and in 1231, the good king, St. Louis, made a treaty with the Duke of Brabant, endeavouring to convert these rights into money payments.

Among the religious efforts made to limit this odious custom of a cruel age, may be mentioned, the "Judgments of the Sea," a code of St. Louis, in 1266. By these new regulations, the seigneur on whose domains unfortunate vessels were cast, was not permitted to seize the property or to enslave the persons of the crew; but he is required to aid the sufferers and to save the property. "Whoever shall do the contrary, shall be excommunicated from the church, and punished as a robber" (Art. 29), and by Art. 30, if, after a year, no owner appear, the baron shall publicly sell the wrecked property, and distribute the money among the poor, and otherwise do works of compassion with the proceeds.

The Lateran Council (1179) promulgated one article against the inhuman practice, and forbade any one despoiling the wrecked.[1]

These efforts however did not avail, for in 1277 Philip the Bold was obliged to issue an ordinance, excepting from the usual royal claims the property of Italian merchants thus brought to misfortune.

Louis XI. (1465–69) claimed all shipwrecked goods as legal property of the crown; the only exceptions being in favour of the Dutch and Flemings, and of the Hanseatic League. The ordinance of 1543 is said to be the first legal evidence of a reform in this practice in France; by

[1] Ne patientes naufragium quisquam spoliare præsumat. (C. 21.) Excommunicatione quoque pœnæ subdantur qui Romanos aut alios Christianos pro negotio vel aliis causis honestis navigio vectos, aut capere aut rebus suis præsumunt. (3 *Conc. Lat.*)

this act, the wrecked persons were permitted to reclaim their property within a year and a day.[1]

In other portions of Europe there was much humane legislation against this evil. In Spain, Sicily, and Italy, the commercial cities and Republics strove everywhere to include humane treatment towards the wrecked in the privileges granted to them by treaties. The religious bodies universally denounced the practice of cruelty towards these unfortunate persons. It existed on the coasts of Scotland till the thirteenth century; and in Germany it was only in the twelfth century that the right of the baron or the crown over wrecked property was changed to a fine for protection. On the coasts of Prussia the ancient right of plundering and enslaving the shipwrecked was believed to be derived from the old Rhodian Law.

Many treaties were made in the thirteenth century between Christian and Mohammedan countries, endeavouring to protect Europeans from this cruel practice. The final abolition of this inhuman custom was due to a combination of influences. The sense of humanity taught and encouraged by the new Faith was also stimulated by the broadening effects of commerce, and by the mutual interests of traders and their customers.

The only nations among whom this barbarism still endures in modern times, are the non-Christian, especially the Mohammedan peoples of the north of Africa. But even here, the power of civilized races has checked it; and humanity to the shipwrecked is now stamped by the Christian Faith on the public law and custom of all leading nations. It would not only be considered in this age a violation of international law to plunder or treat cruelly the shipwrecked, but the religious and humane spirit of

[1] Pardessus. *Collection de Lois Maritimes.*

Christian countries has made it a duty and satisfaction to aid these unfortunate persons.

Piracy.—The practice of indiscriminate plundering on the sea in the twelfth and thirteenth centuries, was only a part of the private war prevailing on the land. Every individual, or town, or state who chose, could equip a vessel and plunder all others. No richly freighted ship was safe. Entire coasts became asylums for marine freebooters. Towns employed vessels against other towns; and cities thus waged war with one another.

The leagues of commercial towns did much to clear the seas of these free-booters, and piracy was finally checked by privateering. The evil (in a mitigated form) has lasted down to our own day in the practice of "Private War" under letters of marque, or privateering.

The new spirit infused into international law by the great Teacher is gradually abolishing privateering, and this century will probably see the end of "Private War" on the sea, as a former century saw that of a similar savage custom on land.

CHAPTER XVIII.

CHARLEMAGNE'S CAPITULARIES.

No student of the Middle Ages can be otherwise than deeply impressed with the wonderful personality which led the work of reforming and re-organizing that portion of Europe held by the German and Keltic tribes. Charlemagne's legislation bears the constant impress of the new moral power in the world; and though his practical action was by no means always guided by Christianity, these laws often give a fair example of the influence of the religion of Jesus on the laws of barbaric tribes.

One of his capitularies (789 A.D.) uses almost the language of the Bible, when he says, "Let no one claim wrongfully the lands of another, and pass not the boundaries of his fathers." "No one should turn away the offerings which may be the whole patrimony of the poor!" "Let peace and good intelligence rule among bishops, abbots, counts, judges, and men of all conditions, for without peace, nothing pleases the Lord." "If ye love one another, all will know ye are Christ's disciples!" According to the command of our Lord, let no murder be committed in the spirit of vengeance, avarice, and rapine; wherever this crime be discovered, let our judges punish it in virtue of our orders, but let no one in future lose his life if the law do not condemn him.[1] Widows and orphans

[1] *Cap. Eccles.*, 61, 66, etc.

and minors are to be protected, as under the peculiar care of God, and are everywhere to have peace and receive justice."[1] "And it pleases us that the faithful should be admonished concerning hatred and discord, which extinguish charity among those nearest, and destroy affection."[2] The true charity which loveth God and our neighbour is to be cultivated;[3] and friendship and affection are to be observed according to the words of the Apostle to the Corinthians.[4] The people were exhorted to peace and concord, because they have one Father in heaven,[5] and because the blessed book had taught them that "Blessed are the peace-makers." They are warned against feud,[6] and in the words of Scripture against any rash shedding of Christian blood.[7] The powerful are cautioned against the oppression of the poor;[8] and all are exhorted to be imitators of Him who would save the souls of men.[9] And all Christians are most solemnly warned to give their utmost diligence, lest they be for ever separated from the kingdom of God, by their strifes and contentions and falsehood and wicked vices.[10]

The great sin of the Middle Ages was the habit of false swearing. These laws bid the citizen beware of perjury, not only on the holy Gospels, the relics of the saints and the altar, but in common conversation. "There are some

[1] Ut viduæ, orphani et minus potentes sub Dei defensione, etc. (c. ccxxvii.)
[2] Placuit ut fideles admonentur de odio et discordia, etc. (c. cclxi.)
[3] Vera caritas qua Deus proximusque diligitur, etc. (cccxlvii.)
[4] c. cccxlii.
[5] Quia unum Deum patrem habemus in cœlo, etc. (Lib. 7.)
[6] Pro Faidâ, etc. (Lib. 5, c. ccv.)
[7] c. cccxxvii.
[8] c. ccclxxxii.
[9] c. cccxxxiii.
[10] . . . a regno Dei se alienos faciant. (*Add.* 2, cxxii.)

who swear by charity and truth, and know not that the same God is charity and truth"[1]; they urge honest weights and measures in towns and monasteries, for "my soul hateth false measures."[2]

On the question of marriage, no one is permitted to marry a divorced woman (43); and if a man abandon his wife, he is to be punished. No husband shall desert his wife, except for the cause allowed in Scripture—criminal conduct.[3] And still more remarkable, the slave is protected in his marriage, and even if the partners be sold to different masters, the union is still lawful and must be respected.[4] The Christian abhorrence which first animated the Roman law against unnatural vice, appears in the capitularies. The great emperor speaks of the Roman Law as "the mother of all human laws;" and draws a warning from the fate of the nations of Spain and the tribes of the Burgundians, who had been given up to unnatural vices and were therefore permitted by God to be enslaved by the Saracens.[5]

His law also shows mercy to the outlaw (*wargendum*) by making his blood-money the same as for killing a Frank. He repeats the humane phrase, unfortunately too often only a phrase: "Ecclesia abhorret sanguine" (the

[1] . . . ut caveant perjurium, non solum in sancto Evangelio, vel in altare, seu in sanctorum reliquiis, sed in communi loquella, etc. (63.)

[2] Lib. 7. c. cclii.

[3] Nullus conjugem propriam nisi ut sanctum conjugium docet, fornicationis causâ, relinquat. *Cap. Reg. Fr.*, c. lxxxvii.

[4] Unde nobis visum est ut conjugia servorum non dirimuntur, etiamsi diversos dominos habeant sed in uno conjugio permanentes. (*Add. Tert.*, c. iv.)

[5] Sicut aliis gentibus Hispaniæ et Provincæ et Burgundiorum populis contigit, quæ, sic a Deo recedentes, fornicatæ sunt, donec Judex Omnipotens, etc. (Cap. 4, 16.) See also lib. 7, cxlii. Ut monachi secundum regulam vivant.

Church abhorreth blood); he calls cupidity the root of all evil; and recommends hospitality for the reason that he who receiveth a little child in the name of Christ, receiveth Him; the observance of Sunday was ordered, which is a special legislation for the working-classes; respect for the dead was encouraged, and the obligation of prayer impressed on all. The laity were ordered to learn the Apostles' Creed; and, to soften them, the emperor quotes incessantly from the precepts of Christianity, forbidding the oppression of the poor and humble, and ordering the judges to hear the cause of the poor before that of the rich. To break up the ancient feuds which desolated society, he orders that whoever slays his enemy after peace has been declared, must lose his hand and pay a fine (cap. 50). The stranger and far-comer are especially protected, under the injunctions in the Bible, and because such may be journeying in the service of their common Master.[1]

It is true that much of this legislation was violated in practical experience, and that it was largely swept away after the death of the great reformer. But it shows with remarkable clearness, what the direct influence of this Faith from Judæa was upon legislation through the wild period of the Middle Ages, and what it tended to bring about.

[1] Advenam non contristabis, etc. (Lib. xxviii.) Nemo enim ausus sit inquietare vel nocere peregrinum, etc. (Lib. 7.)

CHAPTER XIX.

ANGLO-SAXON LAW.

THERE are two opposite difficulties in weighing correctly the influence of religious faith on the laws, and thus on the morals of a country: one, that the laws may be far in advance of the practice of a people and thus merely represent the ideals of conduct; and the other, that the practice and customs may have far preceded the legislation, which is thus only a "survival" of an ancient period. In regard to the Anglo-Saxons or Old English, it would appear that the legislation of their kings and assemblies was much in advance morally of the habits of the people; and that it represented the new and living moral forces which were gradually to change England from barbarism to civilization. That these forces were essentially Christian, is evident from the chronicles and biographies of the period, and especially from the language of the legislation, and the motives habitually employed in it to promote good action. The great peculiarity of the Christian system of morals is the impulse given to virtuous and disinterested action by regard to a Person, to a perfect life and character, which has supernatural relations, and by a consideration of consequences in another existence. These features are especially stamped in the Anglo-Saxon legislation. Whether the well-known religious character of some of the kings, or the deep religious tendencies of the law-makers, have given these peculiarities to old English laws, is uncertain. It is

well-known that the ministers of religion at that era in England were, to a large degree, lawyers; and they exercised a powerful influence on the making of laws. It was an influence, however, moral rather than ecclesiastical or technical. The Anglo-Saxon laws certainly form a great contrast, in this respect, to most other codes of that age. Society in England was more barbarous, and more stained by crime and violence than on the continent of Europe. But no ancient code of the German or Keltic tribes in France and Germany (with the exception of Charlemagne's Capitularies), or of the Welsh in Britain of the same period breathes any such religious spirit or such pure morality founded on Christian faith. The Anglo-Saxon laws, too, have avoided the errors of the Christian Church in separating morality and faith: they are nearer the great Master, in teaching the direct connection of good action or pure thoughts, and respect or love for Him. It is true that in England, as in all other countries, the teachings of Christ were forgotten or obscured by superstition, or submerged by tides of human passion and selfishness, and Christianity was eclipsed there as it has been everywhere in the world. But for a time we see its clear light shining in English history, and we know how many fogs of ancient prejudice it dispelled; how many abuses it silently melted, and what a soil it prepared for all that is best in English growth since. It did not indeed accomplish all that might be expected from its power. But history is long; and the life of one nation can show but an inconsiderable part of the effects of this renovating influence. It is sufficient to describe forces which are capable in their nature of bringing about a complete and perfect moral transformation of society.

In the British Islands, as through all Europe, among the tribes outside of Roman law, personal revenge, as we

have already stated, and family feuds took the place for a long period of legal and judicial punishments. Society was resolved almost to its primeval savage elements. The first influence of Christianity in England (as elsewhere) was to curb personal revenge, by encouraging the existing system of *bot* or fines, so that every kind of offence should be compensated for by some amend, paid in property, in part to the sufferer, in part to the king. From this, the next step is to a strict legal and perhaps bloody punishment by the proper authorities, instead of which no payment can be accepted. Then, beyond this, come the milder punishments, inculcated by the spirit of humanity. Religion aids in each of these steps, but in England, as throughout Europe, it checked private revenge, especially by the "Peace of God" enforced on certain holy days, and in certain places; and by the refuge offered in the churches to the victim fleeing from the anger of a powerful enemy. All these privileges offered by the Church tended to restrain passion in that wild age. It is an instance, too, of the peculiar effect of Christianity, that the freeing of bondmen or the prohibition of their sale in foreign countries, from the earliest Saxon laws down into the Norman period, is always accompanied by such words as that "it is not right to sell him for whom Christ hath died." The commands against unchastity, or cruelty, or oppression, are all accompanied with religious motives. In fact, the laws often sound more like pastoral letters than legislation from warlike kings. A remarkable heading of a law in regard to honesty in King Canute's code, "Ad Eucharistiam et probitatem" (about the sacraments and integrity) might give a rebuke to the Christianity of our own day.

The Laws of Old English Kings.—From King Wihtraed,[1] about 690 A.D., we hear that "men living in illicit

[1] Thorpe's *Collection of Anglo-Saxon Laws* (No. 3).

intercourse should take to a righteous life with repentance of their sins, or that they be separated from the Church." Howell the Good, in the beginning of the tenth century, ordered his Welsh subjects to hold their assemblies in Lent, "because in holy tyme every one should be pure, and should do no wrong at a time of purity."

One provision of his laws shows the effort of the religious officials to promote the integrity of the judges. "A judge is to serve a year's apprenticeship, and then the king's chaplain is to take him to the church, having with him twelve prinçipal ecclesiastical officers, to celebrate Mass. And after Mass and an offering by every one, let the chaplain require him to swear by the relics, and by the altar, and by the consecrated elements placed on the altar, that he will never deliver a wrong judgment knowingly."[1]

King Alfred (about 870 A.D.) introduces his code with the ten commandments and other laws taken from the Bible: he quotes almost directly from Exodus a command especially applicable to his age: "Vex not the far comers and strangers: for ye were once strangers in the land of Egypt." (No. 33.) The "doom" on slaves has the humanity of the Mosaic law: "If any one buy a Christian bondsman, let him be bondsman to him six years; the seventh be he free unbought. With such clothes as he went in, with such go he out." Justice is to be impartial. "Doom thou very evenly; doom thou not one doom to the wealthy, another to the poor; nor one doom to the more loved, other to the more loathed, doom thou not." (No. 41.) Of his laws, the king says: "These are the dooms that the Almighty God Himself spake to Moses, and bade him to hold; and when the Lord's only begotten Son, that is Christ the Healer, on middle earth came, He said that He came not these dooms to break nor to gainsay, but with all good to do, and with

[1] Quoted by Bridgett (*Haddam and Stubbs*, 1, 229.).

all mild heartedness and lowly mindedness to teach them"[1] "That ye will that other men do not to you, do ye not that to other men. From this one doom, a man may think that he should doom every one rightly; he need keep no other doom-book. Let him take heed that he doom to no man that he would not that he doom to him, if he sought doom over him."

Through all the Saxon and early Norman laws, the interests of the working classes are protected in the matter of Sunday. If a bondman work on Sunday by his lord's order, the lord must pay a fine of thirty shillings; if without this order, he must be flogged. If a freeman work without his lord's order, he must forfeit his freedom or pay sixty shillings; a priest pays double. Under Edgar and Guthrum (about 900 A.D.) we find: "If any one engage in Sunday marketings, let him forfeit the chattel. . . . If a lord oblige his slave to work on a festival day, let him pay the fine." (No. 7.) In another law, a wrong to a foreigner is held as wrong done to Christ and the king. (No. 12.) We have already stated that by the customs of the country, if a wreck happened on the coast, the cargo and crew fell into the hands of the king, and in many countries the crew might be enslaved, and that every foreign merchant trafficking among the English must give hostages for his good conduct,—so that it will be understood how important were the Jewish and Christian directions of kindness to the stranger in the Anglo-Saxon law. The following law of King Wihtraed (700 A.D.) gives a curious picture of the state of England: "If a far-coming man or a stranger get out of the high way, and he then neither shout nor blow a horn, he is to be accounted a thief, either to be slain or redeemed."[2] (No. 28.)

[1] Hughes' Translation.

[2] The same law appears in King Ine's code. No. 20.

False Swearing.—King Edward (940-946) commands that "those who swear falsely and work enchantments, let them be for ever cast out of all communion with God, unless they turn to repentance." (No. 6.)

The religious impulse appears especially in King Ethelred's dooms. (978 A.D.) "This then first: that we all love and worship one God, and zealously hold one Christianity . . . that every man be regarded as entitled to right; and that peace and friendship be lawfully observed within the land before God and before the world." (No. 1.) "And let every Christian man carefully eschew unlawful concubinage and rightly observe the Divine laws." (No. 16). "And at those holy tides (certain religious days) let there be, as is right, to all Christian men, general peace and concord and let every strife be appeased." (No. 19.) The following seems the injunction of a Christian pastor rather than of a king: "And let God's law be henceforth zealously loved by word and deed, then will God soon be merciful to this nation." (No. 26.) "We will also yet earnestly admonish every friend, as it is our duty frequently to do, that every one earnestly consider himself, and that he earnestly turn from his sins and that he correct other men for injustice, and that above all things he love his Lord." (No. 42.) "And that they comfort and feed God's poor . . . And that they do not too often oppress widows and step-children, but willingly gladden them." (Nos. 46-49.) "And let every injustice be carefully cast out from this country as far as can be done. And let fraudulent deeds and hateful illegalities be earnestly shunned; that is, false weights and wrong measures, and lying witnesses, and shameful fightings," etc. "And it is the ordinance of the General Assembly, that Christian men be not for altogether too little cause condemned to death; but in general let mild punishments be decreed for

the people's need; and let not for a little, God's own handiwork and His purchase be destroyed, which He dearly bought . . . And let him who judges others bear in mind very seriously what he himself desires, when he says: Et dimitte nobis debita nostra." (vi. 10.)

The ancient laws of King Canute (1017 A.D.) have the tone of a sermon: "Let every Christian man do as is needful for him, let him keep his Christianity," etc. "Let every man guide his words and works aright, and carefully keep oath and pledge, and let every injustice be strictly cast out of this country, as far as it can be done, and let God's law be henceforth earnestly loved by word and by work, then will God's mercy be more ready for us all." (No. 19.) "And we instruct that every one ever guard himself against foul lasciviousness, and against every kind of fornication, and against every kind of adultery. And we also instruct every man that he earnestly have the dread of God in his mind, and by day and by night that he fear for sins, dread doomsday, and shudder for hell, and ever suppose the end of his day near to him." (Nos. 24, 25.) This again has the special stamp of the new teaching: "Let us ever help those who especially stand most in need of help, then shall we obtain the reward of it where it will be most pleasing to us. For we ought always for love and fear of God, to doom and command more lightly to the feeble than to the strong, because we know full well that the powerless cannot raise a like burthen with the powerful, nor the unhale alike with the hale . . . And both in religious shrifts and secular dooms, these things ought to be scattered abroad." (No. 69.) In regard to the sale of a woman as ward or wife, Canute's law says: "And let no one compel either woman or maiden to him, when she mislikes, nor for money sell her." (*L. Can.*, lxxv.) And as to mercy to wrong-doers, this humane legislation directs:

"If any one will earnestly turn him from wrong again to right, let him have mercy shown him, or fear of God, as best may be, very earnestly." In a very ancient Anglo-Saxon writing, "The Institutes of Polity," it is said, that "seven things are befitting a righteous king: first, that he have very great awe of God; second, that he ever love righteousness; third, that he be humble before God; fourth, rigid towards evil; fifth, that he comfort and feed God's poor; sixth, further and protect God's Church; and seventh, that towards friends and strangers alike, he be guided by just judgment."[1] (No. 111.)

Of judges, it is said: "they need to love justice before God, and before the world, and nowhere through unjust judgment for money or for friendship neglect their duty, so that they turn justice to injustice, or adjudicate unjust judgment to the injury of the poor; but it is their duty above all things to honour and defend the Church, and gladden widows and step-children, and help the poor and protect the slaves, if they will rightly execute God's will. Thieves and public wrong-doers they shall hate, and spoilers and robbers they shall condemn, unless they desist, and they shall ever rigidly shun injustice. Woe to him who practises wrong too long, unless he desist right surely shall he pass through the dim and dark abyss of hell, of all help deprived. . . . Let every one guard himself, so that he anger not God too greatly, but propitiate his Lord with righteous deeds." (v.)

Feuds.—Nearly all the Teutonic tribes, as we have said, had a custom or a law, that the inheritance of the land carried with it the inheritance of the armour, and the family-feud or *ultio proximi.*

[1] Thorpe's *Laws and Institutes.*

One of the first objects of the English rulers under the new impulse of humanity is to curb this bloodthirsty spirit.

In the ancient Welsh laws, feud was lessened by establishing certain protections for every attendant of the court, and for given hours of the day and fixed places.[1]

King Edmund also makes "known to all people, both old and young, that are in my dominion, what I have deliberated in the Council of my Assembly, first, How I might most promote Christianity. To me and to us all are exceedingly offensive the unrighteous and manifold fightings that are among ourselves. If any one henceforth slay any man, that he himself bear the feud unless with the aid of his friends, and within twelve months he compensate with the full amend, be he born as he may. But if the kindred forsake him and will not pay for him, then I will that all the kindred be free of the feud, except the doer, if afterwards they do not give him either food or protection."

Almost the first provision of the ancient Saxon code of Æthelbirht (who was baptized in 597 A.D.) was to make the fine for revenging a feud in the refuge of the Church, double of that in any other violation of sanctuary.

By King Ine's law, "If any one take revenge before he demand justice, let him give up what he has taken to himself, and pay the damage done and make amend with thirty-five shillings." (No. 9.)

Feuds were restrained by the "Peace of God" declared on certain days,[2] to violate which would expose the offender to severe punishments. Certain places also were made inviolable sanctuaries. Vengeance at private festivals,

[1] See Thorpe's *Laws of Wales*. This curious code is full of provisions to restrain feud; and the most archaic penal provisions.

[2] Ab adventu Domini usque ad octavum Epiphanie pax Dei, et sancte Ecclesie per omne regnum. *Leg. Ed. Can.*, No. 2. (1047 A.D.)

was restrained by such remarkable laws as the following: "At a banquet or any gathering, those assembling must first agree to maintain the peace of God and of the housemaster. If any one has a feud he must engage to satisfy his adversary by pledge in a certain place; but if they cannot arrange, the guilty one must leave the banquet; but if after this, one troubles it, he shall pay a fine." (Laws —Henry I. 1101 A.D. No. 1, 2.) In the ancient laws in regard to the *Dun Setas*[1] (mountain-dwellers) or the natives of Wales, a new spirit will be seen after the introduction of Christianity. The Welshman is no longer hunted as a wild beast; he is permitted to pay fines like an Englishman, and personal raids on his territory are not permitted. "If a Welshman slay an Englishman, he need not pay for him on this side, except with half his fine, no more than an Englishman, on that side," etc. (No. 5.)

These provisions only express the early substitution of humanity for barbarism in the bitter feuds and enmities between two neighbouring peoples, and this under the influence of the new Faith—a single instance of the transformation going on throughout Europe.

Alfred, in the introduction to his laws, expressly states it as a special result of the "Faith of Christ," that many nations through their religious assemblies had ordained, "out of that mercy which Christ had taught," that secular lords might without sin take for almost every misdeed, on the first offence, a money *bot* or fine which was fixed by law. This at once took away the necessity for revenge, and substituted law and legal punishment for personal vengeance. Individual passion he seeks in every way to restrain. "We also command that the man who knoweth his foe to be home-sitting, fight not before he demandeth

[1] Thorpe's *Collection*.

of him" (No. 42); and in various laws, the good king seeks to hold back the bloodthirsty passions of the day. There are more than thirty laws in his code, establishing *bots* or fines for various offences.

In all these words of human brotherhood, of piety, and the spirit of justice, of pity and humanity, uttered by the barbaric lawgivers of a wild race, there speaks a great Personality—the embodiment of the highest sympathy and most disinterested virtue of mankind.

It cannot be said indeed that these religious influences, so apparently genuine, produced any powerful effect on society in Anglo-Saxon England, though they modified the laws. Still they began the history of the religious forces in England, which, though obscured by much formalism and hypocrisy and weakened by selfishness, have yet worked out slowly the great moral and humane reforms in the history of that country, and have tended with other influences to make it one of the great leaders of modern progress.

CHAPTER XX.

EDUCATION IN THE MIDDLE AGES.

THERE can be no doubt that the peculiar interpretation given by the early Fathers, especially by Augustine, to the Old Testament, and their views of inspiration, often caused the Church to be opposed to science and mental progress. Christianity, however, in its essential power, tends to open the intellect to truth; to cultivate the humility and the fair-mindedness which especially enable the mind to see what is, as it is; and, awakening the whole moral nature, to indirectly arouse the purely intellectual faculties.

The mental stimulus given to Europe in different ages by non-Christian forces, is ever to be gratefully acknowledged. Roman law, Greek and Roman literature have not yet spent their influences on human progress. Arabic science had for one period a prodigious power. Yet it becomes increasingly evident that the races which have been partially (though imperfectly) moulded by Christianity, are to be the leading powers in the intellectual and scientific progress of mankind. The especial truths of Christ were not apparently intended to affect science or intellectual advancement. Yet, being in harmony with the most complete and healthy moral condition of man, they did so arouse and dignify the whole nature as to fit it for high mental progress. They tended to form a candid, generous, self-forgetting character, intensely in-

terested in moral truths, and things unseen and eternal; a character which would naturally also concern itself with other researches, beside those religious. Hence it is probably, that for eighteen centuries, the Christian believer has been the especial leader in science; for we include under the "Christian" character, even those scientific sceptics who have grown up under all the peculiar influences of Christianity.

The Church, it must be admitted, has often been entirely false to the candid, charitable and humble type of character, taught by the Master. Its bigotry, intellectual narrowness and one-sidedness, its opposition to science and freedom of thought, its cruelty towards those of differing opinion and indifference to intellectual activity, and its want of charity, have no foundation or excuse in the Gospels. But, while lamenting its errors, we must never forget its great services to intellectual progress. In ages of brutal violence and of barbarous ignorance, the religious associations of convents and monasteries became the shelter of learning and study. The classics were revived under the shades of the cloister. The lamp of science and literature was kept burning during the "dark ages" in the monk's cell. Manuscripts were painfully copied and the relics of a higher intellectual age were preserved to animate a future century. Without the influence of these monasteries and churches, Europe would have sunk into a yet darker ignorance, and we might have had in Germany, France and Italy, the history repeated of the Byzantine Empire;—a degradation and ignorance which would require the shock of foreign conquest to dispel and remove.

The Christian Church, from the very first centuries, naturally connected itself with the school. The child under the view of Christianity took (as we have often said) a very different position from that under Roman law or classic custom. When Christ called the little ones to His arms and blessed them, they became for ever consecrated in Christian tradition. Their mental condition must also not be neglected. The Councils early began to consider this.

The Council of Vaison (529 A.D.) thus treats of education: "It hath seemed good to us that priests with parishes should receive into their houses, according to a sound custom in Italy, young readers to whom they give spiritual nourishment, teaching them to study, to attach themselves to holy books and to know the law of God." The Synod of Orleans (799) thus exhorts: "Let the priests in villages and towns hold schools, in order that all the children entrusted to them, can receive the first notion of letters. Let them take no money for their lessons." (*Theod.*, cap. 20.)

The Council of Chalons (813) decreed[1] that bishops should establish schools where both literature and Scriptures should be taught. Still another Council proclaimed (859): "Let one raise everywhere public schools, that the Church of God may everywhere gather the double fruit of religion." (*Conc. Ling.*, cap. 10.)

The Council of Mayence (813) orders the priests to exhort the fathers of families to send children to schools opened in monasteries, in order that they may learn to pray and be fortified in the Christian faith. Another Council (826) at Rome orders three kinds of schools to be founded in all Christendom; firstly, episcopal schools in towns; secondly, village schools; and thirdly, wherever necessary.

[1] ". . . ut episcopi scholas constituant in quibus et litteraria solertia disciplinæ et sacræ Scripturæ documenta discantur." (*Conc. Cub.*, cap. 3.)

The Council of Trent commands that the children of the poor have at least one master to teach poor scholars grammar gratuitously.[1] Charlemagne had already (789) given these wise instructions: "Let one open schools to teach children to read; let, in every monastery, in every bishopric, some one teach psalms, writing, arithmetic, grammar, and employ correct copies of holy books; for often men seeking to pray to God, pray badly on account of the unfaithfulness of copyists." (*Cap. Ecc.*, 61–66.)

A beautiful letter on this topic, nominally from this remarkable man, has come down to us, addressed to the Abbot of Fulda (787 A.D.): "During past years we have often received letters from different monasteries, informing us that at their sacred services, the brethren offered up prayers on our behalf; and we have observed that the thoughts contained in those letters, though in themselves most just, were expressed in uncouth language. And while pious devotion dictated the sentiments, the unlettered tongue was unable to express them aright. Hence there has arisen in our mind the fear, lest if the skill to write correctly were thus lacking, so too would the power of rightly comprehending the sacred Scripture be far less than was fitting. And we all know, that though verbal errors be dangerous, errors of the understanding are yet more so. We exhort you, therefore, not only not to neglect the study of letters, but to apply yourselves thereto with that humility which is well pleasing to God; so that you may be able to penetrate with greater ease and certainty the mysteries of the Holy Scripture. For as these contain images, tropes and similar figures, it is impossible to doubt that a reader will arrive far more readily at the spiritual sense, according as he is better instructed in

[1] ". . . qui clericos aliosque scholares pauperes grammaticam gratis doceat." (*Conc. Trid. occ.*)

learning. Let there therefore be chosen for this work, men who are both able and willing to learn and also desirous of instructing others; and let them apply themselves to the work with a zeal equal to the earnestness with which we recommend it to them.

"It is our wish that you may be what it behoves the soldiers of the Church to be, religious in heart, pure in act, eloquent in speech, so that all that approach your house, in order to invoke the Divine Master, or to behold the excellence of your religious life, may be edified in beholding you, and instructed in hearing you discourse or chant, and return home, rendering thanks to God most high." (*Const. de Scholis. Baluze.*)

We have again an instruction of Theodolfus (796 A.D.), under Charlemagne:

"Let the elders found schools through the towns and villages; and if any of the faithful desire their little children to be commended to them for learning liberal studies, let them not refuse to receive them, but teach them with the utmost charity."[1]

All these exhortations were not without their effect, and great numbers of schools sprang up throughout Christendom; an immense quantity of manuscripts were also copied by the monks.

From the sixth to the fifteenth centuries there was a deep interest in the monasteries in copying and binding manuscripts, especially of classic authors. The following striking words are from a monk who has exerted a deep influence on the world: "Do not trouble yourself at the fatigue of your work, for God, who is the source of every good and just labour, will give the reward, according to your efforts, in eternity. When you shall be no more,

[1] Presbyteri per villas et vicos scholas habeant et si quilibet fidelium suos parvulos ad discendas literas, etc.

those who will read the books, once copied by you with elegance, will pray for you; and as he who gives a glass of cold water does not lose his reward, so he who gives forth the living water of wisdom, will receive more surely his recompense in heaven." [1]

A Council (1179) proclaims: "As the Church of God is provider of those who have need of the nourishment of such, as well as of those who fail of success of body; in order that the poor whose relatives fail of resources may have the possibility of learning to read and to be instructed, we appoint in every Cathedral church a master to instruct clerks and poor scholars. . . . Let one re-establish this in monasteries where it has existed anciently; but let no one demand pay for teaching." (*Conc. Concl.*)

All classes studied in these monastic schools, so that rich and poor were brought together on the field of learning. Nor were the popes altogether wanting to the intellectual movement. Pope Innocent IV. (1254) publicly recommended philosophic study instead of legal. A decree of Clement V. directed Hebrew, Arabic and Chaldee to be taught in the monasteries. Sylvester II. is said to have introduced Arabic numbers into Christian Europe.

We do not continue the enumeration of these evidences of the services of the Church to learning in the Middle Ages, because they are only indirectly the effect of Christianity. All that we urge is, that the Christian teachings, in their natural and legitimate influence, open the mind of man to truth, and by their moral power awaken the whole nature and thus stimulate the intellect.

The position of the Church on Biblical inspiration, and therefore towards science, and her fierce bigotry towards differing opinions, receive no countenance from the Master.

[1] Thomas à Kempis, *Doct. Juv.*, c. iv.

It is true that He teaches that child-like humility and purity will lead to higher spiritual and moral truth than mere learning or scholarship. And Paul proclaims that in a future existence, the moral powers will exist when intellectual acquirements have been found to be of little worth.

But neither of these aspects belittle science in this world. Indeed, the Christian "simplicity" is one of the guarantees to the scholar that he will attain truth and not be led away, as have been so many, by the false lights of conceit and prejudice. The whole world might be entirely inspired with the Faith of Christ, and yet no obstacle offered anywhere to the freest scientific research, but the path of knowledge be made easier, in that all men sought justice and mercy and truth was the holiest thing.

CHAPTER XXI.

SERFDOM AND SLAVERY IN THE MIDDLE AGES.

UNDER the Romans, in the Later Empire, as we have already said, serfdom arose almost naturally from the universal disorder and chaos of society. The slave, if freed, could not protect himself, and preferred the state of half freedom and of safety which serfdom offered. The small farmer found himself better guarded from robbers and invaders, by attaching himself as serf (*inquilinus*) to the estate of some powerful nobleman or leader. The wealthy patron at Rome rewarded his faithful clients by bestowing on them parcels of land in the provinces, where they were attached, as *coloni*, to the soil; and again, the government settled bodies of prisoners or immigrants on large districts of public land, and made them serfs to the soil. These [1] *coloni* (or *adscriptitii*) were considered as free-born, but attached to the soil; they could fall into slavery, and if they ran away from their estates, they might be punished with servitude. Their marriage was held legitimate, and the children, by a mild provision due to religious influences, followed the condition of the father; they were excluded from the army and from public honours, but could become priests with the consent of the master;—this provision showing one mode in which the Church could indirectly emancipate them. They were freed

[1] Du Cange, *Coloni.*

from any tax to the government, and could only be sold with the land; the land could not be sold without them. As far back as Marcus Aurelius, the legacy left by a master of a serf not attached to an estate, was not good in law.[1] A *colonus* could be, under certain circumstances, a freeholder. Salvian speaks of the poor farmers who had made themselves serfs for the sake of protection.

As we have noticed before, the Roman laws modified by the new teachings began at once to protect the serfs. The penalty of death was denounced in Gaul on him who should seize the persons of serfs or serf-stewards (*villici*) in payment of debts or taxes. The laws of Constantine forbade the separation of near relatives among slaves of the soil; husband could not be separated from wife, nor parents from children.[2]

A runaway slave or serf who had been free for twenty years, or had held a public office, or had been in military service, or had voted in the assembly, was presumed to be free, and could defend his own rights. A free-born person, or one who became a slave by violence, could always reclaim his liberty.[3] The child became free, even if the mother had been enslaved within the nine months before its birth; or if the mother was a slave and was emancipated without her own knowledge, the child was free. The effect of the Faith from Galilee was to make all the presumptions in favour of liberty. Freed slaves became Roman citizens in the presence of the assembly (*ecclesia*) and the bishops who signed the acts of manumission. The clergy did not need such formalities, but could free by word of mouth.[4]

[1] Si quis inquilinos sine prædiis quibus adhærent legaverit, inutile est legatum. (*D. de legat.*, 11, 12.)

[2] *Cod. Theod.*, 11, 25, 1.

[3] *Ibid.*, iv. 7, 2.

[4] *Ibid.*, iv. 7, 11.

The various Church Councils thundered their anathemas at those who re-enslaved those freed under religious forms. The reformed law under the influences from the Gospel teaching differed from the Roman law in admitting a kind of marriage between slaves (*contubernium*), for the reason that "We have a common Father in Heaven."[1]

Both slavery and serfdom descended into the Middle Ages. The Christian Church struggled to a certain degree against these abuses. But, whether this organization was faithful or not to its Master, the spirit of Christianity worked continually on individuals, and thus on society, to mitigate and remove these evils. Still slavery in the Middle Ages presented some of its most peculiar features. Up to the twelfth century, there was an absolute power of the master over the life of the slave. After this, only a slight fine was inflicted for his death, while cruel punishments by the owner were permitted. The latter had also full control over the slave's property and earnings. Even the marriage was not held fully equal to the Christian tie. For several centuries after Christ, the barbarian nations did not receive benediction, or hold religious ceremonials at the nuptials of slaves. When this began to possess more the character of a legal union, a slave marrying without the consent of his master was liable to severe punishment, even of death; this was later reduced to a fine alone. All the children of the slave became the property of the master, and could be sold like any other property.

The slave had no title to anything but his clothes and subsistence; if he had a property (*peculium*) given him by his master, he could not save out of it. All his effects at his death fell to his master. He was distinguished by his dress and appearance from other classes;

[1] . . . quia unum patrem habemus in cœlo.

even his testimony could not be received against freemen. From this condition of severe bondage there was, throughout Europe, a gradual and often unnoticed passage to serfdom.

As early as 119 A.D. we hear that Hermes, a Prefect of Rome, being converted, presented 1,250 slaves for baptism, all having been freed. Another Prefect, Chromatius (284 A.D.), after his conversion to Christianity, is related to have freed 40 slaves, first having baptized them, with the words: "Those who begin to be children of God ought not to be slaves of man."

Thirty-seven Church Councils are reported to have passed acts favourable to slaves. In the year 305, any master ill-treating his slaves is condemned; in 517, the murderer of a slave is excommunicated; in 549, the right of asylum in a Christian church is offered to the runaway, and slaves freed by the Church are protected; in 666, bishops or priests ill-treating slaves are severely punished. In 441, emancipation is protected and encouraged; in 585, the ornaments and property of the Church are permitted to be sold for ransoming slaves; in 566, Christians are forbid reducing freemen to slavery, and in 922, no Christian is permitted to enslave a fellow Christian. In 656, any slave compelled to work upon Sundays becomes free by the fact, or if he be held over the font for baptism. This idea that baptism made free, existed even as late as the American colonial history, when American masters hesitated to baptize, lest by the act they freed their slaves.[1]

The forbidding the labour of slaves on Sunday and

[1] There are two acts reported of the Virginia Colonial Assembly, assuring to the masters the undisturbed condition of slavery, after the baptism of their slaves. (Anderson's *Hist. of Col. Ch.*, vol. ii. p. 552; vol. iii. p. 227.) See also Hefelen, *Conciliengeschichte*, and Landon's *Manual of Councils.*

Festival days was a humane protection; the scourging of slaves or driving away their cattle was denounced under the strictest penalties. The West-Gothic laws were especially under the influences of the Church; and they are remarkable as carefully protecting the honour and the marriage of bondmen. Under them, the serf could transmit and inherit property, and appear in a court of law. The monasteries gradually ceased to sell serfs, and forbade their exchange. Step by step this class could give testimony, and certain individuals act as judges; they were allowed to carry on trades and even to win knighthood. In the twelfth century, Adrian IV. confirmed the marriage of slaves against the will of the masters, in the most solemn manner.[1] The property of serfs was more and more secured to them.[2] The Church encouraged manumissions at festivals, at births and deaths; and made all forms of manumission full forms of freedom. It enacted laws that if a serf saved a certain sum, the master was obliged to free him on payment of this; and it made all bondmen free who entered the service of Church or State.

The Christian belief and impulse tended everywhere to undermine both serfdom and slavery; and encouraged the ransoming of slaves and prevented the slave trade, especially the selling of Christians.

Among much similar legislation, the decree of the Council of Chalons (650 A.D.), with forty-four bishops in session, ordered that no Christian slaves should be sold outside the kingdom of Clovis, with the words, "The

[1] Si contradicentibus dominis et invitis, matrimonia servorum contracta fuerint, nulla ratione sunt propter hoc dissolvenda. (Cap. I. x. 4, 9).

[2] Non licet pecuniam suam servo auferre quam ipse labore suo adquisiverit. *Egberti. Conf.*, c. 35.

highest pity and religion demand that Christians should be removed entirely from the bonds of servitude."[1] The melancholy trains of slaves in the various slave markets of Europe, which used to offend the eyes of the humane, were gradually removed. The slave trade was punished, as an act of "diabolic inspiration" in the ninth century, though this indignation did not reach the trade in heathen slaves.

An edict[2] of Charles le Chauve (864) threatened a heavy fine on those who sold beyond sea such unfortunate persons as were reduced to slavery by famine.

It was a not uncommon practice for the poor in the Middle Ages to sell themselves into slavery, or to become slaves by debt. The new humane legislation permitted such persons to buy their freedom by paying the purchase money with one-fifth in addition, or by a sufficient duration of the service.

The religious element in emancipation is seen strikingly in the forms of manumission of the Middle Ages, transmitted to us by Marculfus, and in the words of those urging the duty of freedom, as well as in the ceremonies used. Pope Gregory the Great, at the end of the sixth century, proclaims that inasmuch as the Redeemer of men had taken upon Himself humanity, to restore us to liberty, so it becomes us to restore those men whom nature had made free, but the law of nations had made slaves, to their natural condition—namely, liberty.[3] The influence of the

[1] Pietatis maximæ et religionis intuitus ut captivitatis vinculum omnino a Christianis redimatur, etc.

[2] Et quia hominum ingenia, qui non Deum timent, diabolo suadente, multa mala excogitant, potest fieri ut qui tales homines liberos, necessitate cogente, in servos suscipiunt, etc. (*Ed. Ris.*, c. 34.)

[3] Cum Redemptor noster, totius conditor naturæ . . . humanam carnem voluerit assumere ut . . . pristinæ nos restituerit libertati, salubriter agitur, ut homines . . . libertati reddantur. (*Greg. Mag. op. Pol.*, lib. iv.)

Stoical jurists, as well as of Christianity, in these ideas, is worth noting.

A common mode of manumission was for the master to lead the slave with a torch around the altar; he then took hold of the horns of the altar, and the earnest words of liberation were spoken. One form, given by Muratori, of bestowing freedom, uttered these solemn words: "For fear of Almighty God, and for the cure of my soul, I liberate thee, and may the angel of our Lord Jesus Christ deem me worthy of a place among His saints."[1]

Another form utters the prayer of the master, that he may by this act attain to eternal blessedness and shake off the yoke of servitude to his sins.[2] A common phrase of emancipation is "pro remedio animæ meæ," "for the cure of my soul," while the heirs are warned through their love to the Lord Jesus Christ not to return the slave to bondage. Another legal expression is, "I, in the name of God, thinking of the love of God, or eternal retribution . . . do free this slave from the bonds of servitude."[3] Such words as *pro peccatis minuendis*, "for lessening my sins," or "bond and free are one in Christ," or "forgive, and it shall be forgiven," show the spirit animating the framers of these ancient wills. Still another form says, "I, J. N., thinking how I can attain to the absolution of my sins, and looking to the time when the slave shall be freed from his master, do hereby emancipate my slaves, fifty in number," etc. Others look forward to the Divine tribunal, and would show mercy, even as they hope for mercy; others speak of "Divine compassion inspiring."[4] Another form of manu-

[1] . . . absolvo te, Clerisa, pro timore omnipotentis Dei et remedio animæ, etc.

[2] . . . per quam ad eternam beatitudinam valeat pervenire, etc.

[3] Ego, in nomine Dei, cogitans de Dei amore vel æterna retributione . . . ab omni vinculo servitutis . . . absolvo.

[4] Ego, in nomine Dei . . . ut quando de hac luce migravero, anima mea ante Christi tribunal: veniam merear accipere . . . libero servos meos—inspirante divina misericordia.

mission (Muratori), wherein a countess grants freedom to a female slave (1056 A.D.), makes this humane appeal: "Thus we who are formed of the earth, in like manner ought to pity our fellow-creatures . . . and whatever hath been bequeathed unto us, we ought to make free."[1]

This historian, who is an impartial observer of the Middle Ages, holds that the great moving force in bestowing freedom is the love implanted by the Christian religion.[2] Many charters and epitaphs bore the expression of "liberty for the benefit of the soul." Even as late as the thirteenth century, the early feelings in regard to Christian emancipation were kept up, and it was the custom in France to release caged pigeons on Christian festivals, and prisoners were freed "in the name of Christ." The unwonted respect for humanity was shown in that term used in the new rites of manumission, where freedom was called *ingenuitas*, or "nobleness," as of one free-born.[3] One form emancipates a slave for the salvation of the soul, so that he may henceforth lead a free life, as if he had been born from free or noble parents.[4] If a slave became priest, and his master did not oppose it, or had not reclaimed him for a year after his ordination, he was free. One can see how

[1] Ita nos qui de terrâ formati sumus, etc. *Ant. Ital.*, p. 858.

[2] Sed causa frequentior manumittendi miserum hoc hominum genus fuit Pietas et Caritas erga Deum, cujus amore plerumque manumissiones celebratæ reperiuntur. p. 875. *Muratori, ibid.*

[3] . . . ne eorum ingenuitas vel nobilitas vilescat. (*Dip. Cart. Calv.*, 844 A.D.)

[4] Igitur ego in Dei nomine et conjux mea, pro remedio animæ vel retributione æternâ, te ex familia nostrâ, a præsente die, ab omni vinculo servitutis absolvimus. Ita ut deinceps, tanquam si ab ingenuis parentibus fuisses procreatus vel natus, vitam ingenuam ducas. (*Form. Sec.*, LXC. *Rom.* xii.)

directly this must have acted in lessening the number of the slaves.

Peasants' Wars.—The condition of the peasants during many centuries in Europe forms one of the most melancholy pictures in human annals. They were frequently bound to the soil; sometimes they could not bequeath any property to their descendants; the master was allowed at their death to appropriate the choicest animal or most valuable product of the farm; they were obliged to sell to him at his own prices, or to take certain necessaries from him at rates fixed by him; their children were held as almost the property of the master, and the odious *droit de seigneur*, or its equivalent in money, stamped upon their feelings the sense of their degradation.

Even where the person was free, the serf was subject to innumerable taxes and burdens; he must keep his master's buildings in order, do public work on the highways or for the baron sometimes for five days in the week; allow his fields to be trampled down and his crops wasted by the gentry in their hunt for game. Even where he could not be sold away from the land, he could be disposed of with the estate, or could be driven off by persecution. His food was bad, his dwelling wretched, his children were without education, he was robbed of all things, and lived without hope, hating his master and the world which thus ground him to the dust.

It may well be believed that the renewal of the Christian message in the Protestant Reformation, preaching afresh the dignity of the "child of God" and the "joint-heir with Christ," and giving a strange emphasis to the Christian idea of human brotherhood, fell upon these masses of wronged human beings like an inspiration from on high. The serfs saw clearly that their old religious teachers were imposing upon them, and that such an injustice as serfdom could

not be reconciled with the teachings of Christ. They accepted the reformed doctrines as a new gospel of liberty. In different countries they burst out against this oppression of ages, and proclaimed freedom in Church and State. Unfortunately, most of the chroniclers of the Middle Ages have been on the side of the masters, and we know but little of the real aims and designs of the much-oppressed serfs. They committed great excesses, no doubt, but these were the natural reaction against centuries of wrong and injustice. The explosion, however, aided in finally removing the heavy burdens which had so long weighed on them.

In the fifteenth century especially, these outbreaks burst forth in Germany. Many associations were formed among the peasants to obtain release from their burdens, and these all had religious mottoes or devices. One is spoken of on the Upper Rhine,[1] which had a banner with a picture of Christ crucified, before whom kneeled a serf, with the legend: "Nothing but God's justice!" The demands made by the Schwabian peasants in the insurrection of 1525 ran somewhat thus:[2] (1st) "It hath been the custom till now to hold us for serfs, which is a pity, seeing that Christ hath bought us and redeemed us with His blood"; and (5th) "It is found in the Holy Writ that we are free, and we . . . desire to be free, . . . we would have God as our Lord, and know our brother in our neighbour. . . . We would willingly obey our chosen rulers, but we have no doubt that they, as true and good Christians, will willingly free us from serfdom, or prove to us from the Gospel that we are serfs." The fourth article claims on religious

[1] *Zimmerman*, p. 153. *Der Bauernkrieg.*

[2] *Ibid.*, vol. ii. pp. 99, 102. See also Bensen's *Geschichte des Bauernkrieges*, p. 172.

grounds, the use of wild game, and wood from the forests. Article sixth protests against the increase of burdens upon an oppressed people. It is striking that with the demand for freedom from feudal burdens, is included always that for a free and elected clergy. In conclusion, say the peasants, "If any of these articles are opposed to Holy Writ, and this can be proven to us, we will give them up. The Peace of Christ be with us all!" The oath of the peasants banded in insurrection near Bietigheim, is similar in tone: "Because God hath ever enlightened us with His word, and hath made known to us how utterly we have been despoiled, not of daily bread, but of eternal; and because He lendeth us power and might according as we firmly believe," etc. Then follow similar demands for a free Gospel and freedom from the bonds and burdens of serfdom. The peasants of Elsass [1] proclaimed that "the Gospel should be preached after its true meaning, for it hath been preached for selfishness, and great burdens have been laid on the poor peasant;" they demand freedom from tithes, from taxes on woods and waters and game, and that serfdom be done away. The peasants on the Neckar,[2] under the inspiration of the free ideas of Christianity, went beyond its teachings, and claimed an absolute equality, under the Emperor, of all men. "All worldly lords are to be reformed, so that the poor cannot be burthened by them beyond the rules of Christian freedom: the same law is to be for the highest and lowest." "Princes and nobles must guard the poor and hold themselves brotherly." . . . "All cities and parishes are to be reformed in divine and natural rights after the principles of Christian freedom." In England, a little before this (1356), a monk, John Balle, had preached liberty and equality as principles of the Christian Revela-

[1] *Zimmerman.* [2] *Ibid.*

tion.[1] These doctrines, and Wickliffe's religious influence (1360), resulted in a great resistance of the lower classes to serfdom and its burdens. The English peasants' uprisings of 1381 proclaimed the entire abolition of villenage; and Richard II. (1380) consented to the doing away of many of its vexatious burdens and payments, but these were subsequently restored by Parliament. During the century and a half after the Peasant Revolt, says Green (p. 230), "villenage died out so rapidly that it became a rare and antiquated thing." Stubbs [2] also notes that the result of the rising of 1381 was, that "the landlords gave up the practice of demanding base services," and emancipation was greatly advanced.

We have touched upon these remarkable movements of the peasant class in various countries, in the fifteenth and sixteenth centuries, because they are so manifestly connected with the liberalizing influences of the reformed preaching of Christianity. They did not, it is true, succeed, but they undoubtedly undermined serfdom, and caused all classes to be more ready for gradual freedom. They show the natural and inevitable action of Christ's teachings on men's minds, where they have long been oppressed by injustice.

Even the highest classes felt this inspiration of freedom through the Gospel. The Emperor Sigismund (1436) thus proclaims: "It is an unheard-of thing that in the holy Christianity one should be so proud as to say to a man, Thou art mine!" "For whoever is baptized and believeth, be he noble or ignoble, rich or poor, he is counted among the members of Christ. Whoever therefore calleth a fellow-Christian his own, he is not a

[1] Inter eos æqua libertas, eadem nobilitas, par dignitas, similisque potestas. (Quoted by *Sugenheim*, p. 295.)

[2] *Constitutional History of England*, vol. ii. p. 463.

Christian, is against Christ, and all the commandments of God are lost on him."[1]

The process of emancipation under the Christian influences was often gradual, first from slavery to serfdom, and then from a lower to a higher form of serfdom. The serfs of the public treasury *(fiscalini)* and of the Church (*ecclesiastici*) acquired peculiar privileges. The laws forbade them to be reduced to the condition of ordinary serfs; they had a right to their own property; the fines to protect their persons were double those for other serfs, and one-half of those for freemen. They could appear in court and testify; while the ordinances of the Councils protected them from forced labour and oppression. In Burgundy and France, there was a gradual transition in the ninth and tenth centuries from serfdom to a condition which was intermediate between servitude and freedom. Persons in this condition acquired the right to their own property, both in land and personal effects; they had the power to transmit to descendants, and even to dispose of their estate by will, or, leaving no descendants, the State inherited from them. They could use their own property to purchase their liberty.

The *coloni*, as we have said, were a species of serfs under Roman law, and they are found through the Middle Ages. They were often bound to public labours and to forced work for others. Some of the abuses from this system extended down even to the eighteenth century in the Jura. A colonist could buy and possess land, and even slaves, but could only sell real estate with the consent of the "Patron"; and in France he was forbidden to give or to sell to another seigneur. He could transmit property in direct lines, but in collateral only to brothers and sisters and their children.

[1] *Zimmerman*, p. 107.

Gradually through the Middle Ages, there was a transition from the state of colonists and mainmortables [1] to that of tenants and freeholders. Among the serfs, marriage was not permitted outside of the domain without the consent of the master. One of the fruits of religious influence on the Roman law was that in a mixed marriage of a serf woman and free man, the children did not follow the mother, but, by a humane principle, the best condition.[2]

Up to the eleventh century there were, under religious impulses, isolated acts of manumission at death-beds and by will. The crusades, both as a grand movement of religious enthusiasm, and as breaking up classes of society, increased the tendency. It was not uncommon, before starting on a crusade, for a noble to free his serfs, as an act of conscience towards God; he perhaps going to his death.[3] Many also manumitted in order to raise money for the expedition.

In the eleventh century, Emperor Conrad speaks of the sale of human beings as a "thing nefarious, and detestable to God and men." [4]

In 1096, in France, Philip I. and Louis Le Gros (1108)

[1] *Mainmorte* (the dead hand). An absolute incapacity to transmit property—a condition of serfdom. Thus ancient French ordinances say: Comme créature humaine qui est formée a l'image de nostre Seigneur, doic généralment estre franche par droit naturel, . . . que les hommes . . . en leur vivant sont reputés ainsi comme morts. (*Ch. de Val. Ordon.*, vii. 12.) See Du Cange (*Manus mortuæ*). Homines manus mortuæ sunt servi glebæ.

[2] *Cod. Theod.*, iv. 3 c.; *Just.*, xi. 67, 4. It is singular that this humane provision, bequeathed by Christianity through the Middle Ages, was dropped in the American Law of Slavery.

[3] Ego Jerosolimam profecturum intelligens a viris religiosis, sapientibus et discretis . . . ne si posteris et successionibus meis exemplum hoc rapine et exactionis inique relinquerem . . . omnino remisi in perpetuum. (*Lois de la ville de Lille.*)

[4] . . . etiam ut rem Deo hominibusque detestabilem, etc. (*Pertz*, xi. 38.)

gave examples of a more general freeing of slaves. The leading nobles and clergy granted municipal charters which were charters of emancipation.

In the fourteenth century, the Count of Valois, brother of Philip the Beautiful, freed the serfs of his comté with the words: "As the human creature who has been formed in the image of our Lord, ought to be free by natural right . . . let these men and women be free," etc. In 1256 Bologna, feeling the influences working through European cities, freed all its serfs, paying an indemnity to the masters, and decreeing that in the future none but freemen should inhabit the city, with the remarkable words: "Our Lord God hath established at the origin of things, paradise, and hath placed man there, in giving him a full and entire liberty. By sin all the human race hath been poisoned, that which was immortal becoming mortal, liberty perishing in servitude. It is then just and salutary that men freed and saved, should be delivered from the bonds of servitude in which the abuse of force has enchained them. It is for these reasons that the city of Bologna, which has always combated for liberty, remembering the past, and its eyes fixed on the future, in honour of our Saviour Jesus Christ, hath ransomed all the serfs on its territory, and decreeth that it would not suffer there a man not free."[1]

Many efforts are recorded of St. Louis (1315) to abolish mainmorte.

Slavery is spoken of in French annals up to the twelfth century, but no traces appear in the thirteenth, as many of the laws prove.

The slave trade was common in Europe in the tenth century, as is abundantly shown in the papal bulls; there

[1] *Istoria di Bologna*, Girarhacci, quoted by Laurent. (*Sugenheim and von Raümer*, vol. iii. p. 168.)

are but few traces of it, however, in the fifteenth and none in the seventeenth; the trade was almost entirely in heathen captives. In Florence as late as 1526, there was a traffic in Mohammedan slaves. The right in France to sell Christian slaves was first abolished, and finally the whole traffic was done away with.

In Germany, the code of the thirteenth century, the *Sachsenspiegel*, or "Mirror," is full of traces of Christian influence against slavery. The Lord is said to have "put poor and rich equally under His own love." (3, 42.) Slavery is declared to have its "origin from unjust captivity"; and quoting the Bible, the law affirms[1] that man belongs to God alone, and "whoever holds him as slave, sins against the power of the Almighty." The stranger under the heathen code was presumed a serf or slave; under this, the presumption was of liberty. "How can those," asks the law, "who are not permitted to give themselves to slavery, reduce others to this state? At the great jubilee year of the Jews, in memory of the Seventh Day and of the Rest of the Lord, did not one give liberty to all the Israelites who had become slaves, even to those who had not desired to be freed?"

The killing of a slave was forbidden in the strictest terms,[2] and the "half-free" were not allowed to hold slaves, which was a marked softening of the old codes.

The abolition of slavery in Scandinavia in the early centuries is unquestionably the effect of the Christian religion.[3] One of the first Christian kings of Norway—Knut the Holy—at the end of the eleventh century,

[1] Ex his verbis colligitur, hominem ad Deum pertinere et qui eum occupat, in Omnipotentis peccat potestatis. (*Ssp.*, 3, 42.)

[2] Wisse aber dass kein Herr seinen Knecht toedten mag. (*Ibid.*, II, 32.)

[3] *Die Aufhebung der Leibeigenschaft.* Sugenheim.

publicly proclaimed that slavery should be abolished. In 1214, it would appear from the laws[1] that it had almost ceased, and in the fourteenth century are no traces of it in Norway or Denmark. In Sweden, the king Magnus Eriksen (1335) proclaimed that in honour of the Holy Virgin and for the salvation of the soul of his father and uncle, no Christian should be held in his kingdom as a slave.[2] Owing to the strong religious feeling against this injustice, serfdom did not take deep root in Norway and Sweden. This conscientious conviction of the Norse people was strengthened by the natural independence of a brave race, and the consequent weak hold which the feudal system had in those countries. Nearly all the peasants owned land, and the nobles did not acquire large estates. Serfdom and all its attendant curses were comparatively unknown in that portion of Scandinavia. In Denmark, however, owing to the many wars and the greater success of the feudal system, considerable numbers of the peasants were reduced to this condition. Terrible insurrections broke out there in the fourteenth and fifteenth centuries which only increased the burdens of the unfortunate serfs.

The religious impulse touched one king—Christian II. (1513)—who made himself remembered as the "friend of the serf," and who forbade, among other things, "the wicked and unchristian custom of selling and giving away free peasants": he permitted also the free migration of serfs, and ordered that their children be taught various trades, and that they should not be oppressed with heavy burdens.[3]

The Middle Ages, however, did not see the disappearance of serfdom in that portion of Europe.

[1] *Die Aufhebung der Leibeigenschaft*, p. 542.
[2] *Ibid.*, p. 542. [3] *Ibid.*, p. 508.

English Slavery and Serfdom.—In England, as upon the Continent, slavery arose from various causes; from birth, from captivity in war, as a punishment by the authorities, as a penalty in gambling where a man staked himself, and by marriage. By the Ripuarian Law, a free woman marrying a slave became a slave; by the Anglo-Saxon law, under the Christian teaching, the offspring of the free and slave followed the condition of the father,[1] instead of the mother, as according to the Roman law.

Residence also often brought about slavery. *Die Luft macht eigen* ("The air makes the thrall"), says some old German proverb. If runaways were found living on strange properties, they could be enslaved. The blood-money, or *wergeld*, sometimes included bondage, and many debtors became slaves. Thousands of Britons, in times of famine, during the first century after the Norman Conquest, sold themselves into thraldom. Children were even sold by their parents to escape extreme poverty. "If a Christian," says Theodosius in his Penitentials, "sell another into a foreign country, he will not be worthy to have repose in the midst of the faithful until he has restored to liberty and country him whom he sold.[2] If a Christian has found another Christian wandering and vagabond, whom he has seized fraudulently and sold as slave, he ought to sit no more in the assembly of the faithful, until he hath repaired his fault and submitted to a penitence of seven years." "A father," says another passage of the Penitentials, "driven by necessity hath the power of delivering into servitude a son, if he be under eight years; after that he hath no power, except by the will of the son."[3] When a

[1] *H. I.*, lxxvii. 12.
[2] *Theod. Pœn.* i., 5, 13.
[3] Pater filium servum VII. annorum, necessitate compulsus, potes-

youth had passed the age of thirteen, he had the power of selling himself as a slave.[1]

In Scotland there was the same privilege. "Ilk freyman may leff his fredome gif him like is."

The later law in England required certain conditions: among them, that the sale should be made by other than the man himself.[2]

"Though any one sell his daughter to servitude," says an old English law, "let her not be altogether such a theow as other female slaves. He ought not to sell her among a strange folk." [3]

That feature of slavery, lower than anything "brutal,"—the raising children for the slave market,—was not unknown in England. It is alluded to frequently by the historians,[4] and was preached against with righteous indignation by the clergy. Bristol was the great slave market, and there might be seen long trains of British youths and maidens—the latter often ruined for the sake of selling their off-spring—all to be sold either to Ireland or to foreign countries. Bishop Wulfstan[5] of Worcester (about 1086 A.D.) was in the practice of coming to this city every year and spending several months in preaching the gospel against this iniquity. The hardened Northumbrians at length were deeply impressed by these truths, and finally in solemn assembly vowed not only to give up this sinful

tatem habet tradere in servitutem: deinde sine voluntate filii, licentiam tradendi non habet. (*Theod. Pœn.*, xix. 28.)

[1] *Ibid.*, 29.

[2] . . . qu'il est vray que l'homme franc et sub jure se peut vendre . . . La premiere qu'il se fera vendre par autre, que par lui, etc. (*Col. Celt. Lac.*)

[3] *Leg. Can.*, ii. 74.

[4] Illud erat a naturâ abhorens, quod multi ancillas suas ex se gravidas, ubi libidinem satis fecissent, aut ad eternum obsequium vendicabant. (*Mill. Matus.* 57.)

[5] Beda (*Ecc. Hist.*) makes this name Wulstan.

practice, but to induce all England to renounce it. The resolve made a deep impression throughout the country.[1]

One authority says that from Aethelwulf to William the Conqueror, for 230 years, a great part of the English peasantry became reduced to slavery. After Malcolm's invasion of England (1061 A.D.), so many young men and maidens were carried away as slaves to Scotland, that it was said not a village or a house could be found without them.[2] When Canterbury was burned by the Danes in 1006 A.D., all the 8,000 inhabitants were killed excepting "four mass priests" and eighty lower monks; these were severely whipped and, if they could not redeem themselves, were carried off into perpetual slavery.

By the Domesday Book (1068–71 A.D.) the number of male slaves for Sussex is given as 9,200, which would make the whole number about 50,000, while the free inhabitants of the county were only 38,000. In the whole of England enumerated, there appear to have been reckoned 25,000 *servi* or slaves; 82,000 *bordarii*, and 7,000 *cotarii* (different kinds of serfs), and 110,000 villeins.[3]

Among the evidences of the deep root of English slavery is the statement of Strabo,[4] that slaves are a British export; and the historical statement that the sister of Canute and first wife of Godwin, derived a large income from selling English slaves to Denmark.

[1] . . . ancillasque prius ludibrio lecti habitas, jamque prægnantes venum proponebant. . . . Hunc tam invetaratum morem . . . Wulfstanus paulatim delevit . . . divinæ prædicationis semina spargens. Quæ adeo per inter alia temporum apud eos convoluere, ut non solum renuntiarent vitio, sed ad idem faciendum cæteris per Angliam essent exemplo. (2 *Ang. Sac.*, 258.)

[2] . . . repleta est Scotia servis et ancillis Anglici generis, etc. (*Frm. Dom.*, 1070 A.D.)

[3] Villani dicuntur . . . qui *villæ* seu glebæ adscripti sunt. Lib. 4, 199.

There is proof that slaves were branded, and even yoked as cattle.

If a master killed his slave without knowledge of the judge, the Church punished him, where the civil law could not, with excommunication or with a penance of two years.[1] The Church, too, sentenced a mistress who should beat her maid-servant with such violence that she died, to seven years' penance; if the death was accidental, the penance was for five years. According to a law of King Edward, whoever killed a slave man must fast three years. The killing a slave was recognised in the law and by the Church as a sin.[2]

It can only be repeated that the gradual working of Christianity had its usual effect on slavery and serfdom in England. The prohibition, on religious grounds, against selling Christian slaves to heathen countries, runs all through Anglo-Saxon law, and is repeated by William the Conqueror and other Norman kings.[3] The provision in Alfred's laws (taken from the Bible) that a Christian bondsman could only be held seven years, must have tended gradually to free all slaves. Alfred's feelings in regard to slavery are shown in his final will, and they only indicate the religious sentiments of the day. "And I beseech in God's name and His saints, that none of my relatives do obstruct none of the freedom of those I have redeemed. And for me the West Saxon nobles have pronounced as lawful, that I may leave them free or bond, whether I will. But I, for God's love and my soul's health, will that they be masters of their freedom and of their will; and I, in the

[1] *C. Theod. Pœn.*, 21, 12.

[2] Qui servum suum occiderit, suum peccatum est et damnum 475 *Conc.*).

[3] Cavendum enim valde est ne anime in dampnacionem vendantur, pro quibus Christus vitam impendit. (4 *Gul. V.*, xli.)

living God's name, entreat that no man do not disturb them, neither by money exaction, nor by no manner of means," etc.[1]

When Edward the Confessor (974 A.D.) utters such expressions in regard to human equality as the following, we may be sure that the idea of Christian brotherhood is beginning to penetrate barbaric society. "We know," says the pious king, "that through God's grace a thrall has become a thane, and a churl has become an earl (or squire), a singer a priest, and a scribe a bishop; and formerly, as God decreed, a fisher became a bishop, etc. . . . We have all one heavenly Father and one spiritual mother, which is called Ecclesia, that is, God's Church, and therefore are we brothers."

A law of Wihtraed encouraged manumission, by making it when performed at the altar absolute (No. 9). William the Conqueror gives a form of liberation, and enacts that if slaves remain a year and a day without calumny in the royal cities or burghs, walled towns or camps, they should be free for ever.

Still, under English law, the slave was a thing; one of the *catalla*, a chattel. The Christian sentiment, as we have said, first felt the iniquity of selling one "bought by the blood of Jesus Christ"; and later, of possessing him as a bond-servant.

The slaves, as we have already shown, were protected in England on Sundays and feast-days. Masters who compelled them to work on those days lost their property in them. Under Aethelred they were confiscated to the treasury; under Canute, emancipated. The slaves were permitted to work for themselves for twelve days at Christmas, in the week before and after Easter, and during the week before Assumption, and could thus earn money to free

[1] Hughes' *Life of Alfred.*

themselves. "The slaves shall be freed," say the Brehon laws,[1] "the plebeians be exalted by the orders of the Church, and by performing penitential service to God." St. Aidan, a bishop of Northumbria, is said to have ransomed slaves, instructed them, and then ordained them as priests.[2] The synod of Celchyth (816 A.D.) proclaimed that, at the death of a certain bishop, all who had been his slaves during life should be freed; and that every bishop throughout England should grant freedom to three men, giving each three shillings for masses for the deceased bishop's soul.[3]

Bishop Wilfred having received an estate with two hundred and fifty Christian slaves, emancipated them with the words, "All those whom baptism hath rescued from the service of the devil, become by that worthy of the liberty which changeth them from servants to men."[4]

Among the steps towards gradual emancipation in England, may be mentioned, the punishment of excommunication, threatened by Ecgberth of York, for any sale of a child or kinsfolk; slave-murder by the master became a sin before the Church, though not always a capital crime before the law.[5] The slave was often attached to the land and could only be sold with it; he sometimes acquired land and bought his emancipation.

One of the protective features of the Anglo-Saxon law, the mutual responsibility of the citizens, was extended to slaves as to free men, under Æthelstan. (924 A.D.)

A female slave who was led into sin by the master,

[1] *Bridgett*, I, 250.
[2] *Beda*, II, 5.
[3] Landon's *Manual of Councils. Celchyth.* Haddan & Stubbs, *Councils.* Bridgett's *Hist. of Holy Eucharist.*
[4] Beda, *H. Ecc.*, iv. 13.
[5] *Green.*

became free;[1] a provision which especially protected the helpless, and was due to the influence of the religious principle. Slaves were set free on the Church-porch or before the altar, and the Gospel-book bore on the margin a record of emancipation. Sometimes the master placed the slave at a point where four roads met, and bade him go whither he would. In a more solemn form the master took him by the hand[2] in the full assembly, showed him open road and door, and gave him the lance and sword of a freeman.

Before Alfred, slaves could own nothing; under his legislation, they were permitted to dispose by will of what was given them, or what they could earn in their free hours. He forbids also any masters who have incurred a fine or amend, from buying off by the sale of man as well as beast.

The seven years' jubilee, taken from the Jewish system, must have gradually destroyed slavery in England. Slaves, too, were more and more permitted to ransom themselves. Under Canute, when a slave had fallen in the presence of his master on a military expedition, his equipment and possessions could be divided among his heirs.[3] The slave as soldier became thus a vassal.

A slave, even as far back as Wihtræd, if freed was obliged to leave his property with his master for blood-money (wergeld), so that he was thus transferred into a kind of serf. So a slave freed by the violence of his master, did not at once enjoy all the rights of a freeman, but was a client of the sheriff (*gerefa*).

Slave-birth prevents any one from appearing in court as

[1] *Pen. of St. Theod.*, 14.
[2] *Green*, and *Leg. Gul.*
[3] *L. Can.*, 75.

witness. To be free, the bondman needed not merely the will of the master, but also certain public ceremonials.

Emancipation became more and more the Christian work *par excellence;* it was performed at death-beds and in wills, *pro remedio animæ,* for the salvation of the soul; the ceremony was consecrated by the Church and the priest; and the written proof was preserved in the Church records.

The forms of manumission show the spirit which worked towards liberty, "Geatflæd hath freed, for God's love, and for her soul's sake, E. the smith, and A. his wife, and all their offspring, born and unborn, and A. and C, and all the men who bent their heads in the evil days. Whoso shall set this aside and deprive her soul of this, may God Almighty deprive him both of this life and of the kingdom of heaven, and be he accursed, quick or dead, for ever and ever." [1]

Another form has: "And we make all the serfs free for both our souls' sake." [2]

As late as 1535, we find an act of manumission repeating the familiar expression of the Stoical jurists, modified by Christianity, in regard to slavery. "Whereas at the beginning, nature brought forth all men free, and afterwards the law of nations placed certain of them under the yoke of servitude, we believe that it is pious and meritorious towards God to manumit them and restore them to the benefit of pristine liberty," and then the author (Bishop Sherborne of Chichester) liberates a serf.

The slave-trade was forbidden from English ports by law, but legislation did not check the inhuman traffic. One hundred years after Dunstan (946 A.D.) the nobles

[1] . . . ewic aa on ecnysse. (*Cod Dip.*, No. 925.)
[2] . . . for unker bother soule. (*Ibid.* 979.)

still acquired wealth from the breeding of slaves.[1] Under William the Conqueror, the influence of the religion of mercy at length secured the passage of a law forbidding the slave-trade, whose principal port and centre was Bristol.[2]

After the Norman conquest, the condition of the slaves did not for a time improve, as the new conquerors were understood to own the chattels of the native Saxons,[3] and did not at first permit the bondmen to buy themselves into freedom. Henry II. enlarged the laws of emancipation. He recognised blood-money for a slave, with a different amend for different classes of slaves. The master's power over the life of his bondman is limited; if he kill him, he must pay blood-money to the relatives of the servant; the reason in the law being one of those antithetical passages of which our ancestors are so fond "because a slave is a servant for serving, not for killing." [4]

By an act of the same king, no born slave was admitted to holy orders, unless manumitted: [5] a provision which must have had a compound influence on both the Church and slavery, in diminishing bondage.

The Church councils thundered against the slave trade in Christians. One called in London (1102), by Anselm, forbade absolutely that nefarious business of selling human beings like brute beasts; [6] and another meeting at Armagh, Ireland (1171), declared all English Christian slaves free.

[1] *Green.*
[2] *Leg.* xx. 15.
[3] Quia omnia catalla cujuslibet nativi intelliguntur esse in potestate domini sui. (*Glanville*, 5, 5.)
[4] Quia servus ad serviendum, non ad occidendum servus erat. (*H.*, 1, 75.)
[5] *L. H.*, 1. (lxviii. 4.)
[6] Nequis illud nefarium negotium quo hactenus in Anglia solebant homines, sicut bruta animalia, venundari, deinceps ulla tenus præsumat.

Another decreed that no English thralls who had been freed should be re-enslaved.[1]

It is remarkable, that no one can say precisely when slavery was merged into serfdom in England, or when serfdom disappeared.

In the reigns of Henry III. and Edward I., some masters transformed their serfs into freeholders; but if the serf did not do his service as vassal, the master could confiscate his land; if he performed this service, however, the master had no power.

There is no evidence of a transference of the persons of villeins in the thirteenth and fourteenth centuries. They were only obliged to pay for a marriage licence, and were not permitted to select their calling.

A petition was presented to Parliament in the reign of Richard II. that villeins should not be permitted to send their children to school in order to advance them in the Church, which shows that many were then rising out of their condition into that of freemen by becoming priests.

There were many influences throughout England gradually raising up the serf; but the most powerful was the slow action of religious motives on the conscience of the masters. The selling one "for whom Christ died,"—that is, a Christian,—was felt from the earliest ages to be a great inconsistency and offence. Gradually the holding such a person in bondage was seen to be equally against the teachings of the Master; and finally, the laying unjust burdens on fellow-Christians was perceived to be contrary to the Gospel. This sense of justice worked silently and gradually through English as well as European society in the Middle Ages, and continually lightened serfdom by reforms not necessary to be related here, until at length it

[1] . . . in pristinam revocentur libertatem. (*Concil. Lond. Girald. Cambr.*)

disappeared as snow melts before the spring sun, no one being able to say precisely when winter ceased or the new season began.

A trustworthy testimony as to the motives leading to emancipation in England, is given by Sir Thomas Smith, a statesman in the time of Elizabeth, who wrote his "Commonwealth of England"[1] at the close of the sixteenth century (about 1570). He argues without any partiality towards the Church, though with a full sense of the value of religion; and states[2] that already in his time slaves were unknown in England, and of serfs only a few survived, but that both conditions were recognised in English law. Of the causes working towards freedom, he says: "I think both in France and England the change of religion to the more gentle and more equal sort (as the Christian religion is in respect to the Gentiles) caused this whole kind of servile servitude and slavery to be brought into that moderation . . . so that they almost extinguished the whole. . . . This persuasion I say of Christians, not to make nor keep his brother in Christ, servile, bond and underling for ever under him, as a beast rather than as a man, and the humanities which the Christian religion doeth teach, hath engendered through Realmes (not near to Turks and barbarians) a doubt, a conscience and scruple to have servants and bondmen; yet necessitie on both sides, on the one to have helpe, on the other to have service, hath kept a figure or fashion thereof" (pp. 130, 131). And again: "Howbeit since our Realme hath received the Christian religion which maketh us all in Christ, breathren, and in respect of God and Christ, *conservos*, then began men to have conscience to hold in captivitie and such extreme bondage, him whom they must acknowledge to be his brother, and, as we use to

[1] *The Commonwealth of England*, by Sir Thomas Smith, 1589.

[2] p. 129.

term him, Christian; that is, to have equall portion with them in the gospel and salvation." And then with a sly hit at the Church: "Upon this sample, in continuance of time, and by long succession, the holy Fathers, munkes and fryers in their confession, and specially in their extreme and deadly sicknesses, burdened the consciences of them whom they had under their hands; so that temporall men, by little and little, by reason of that terror in their conscience, were glad to manumit all their villaines; but the same holy Fathers, with the abbots and friars, did not in like sort by theirs, for they had also conscience to impoverish and dispoyle the Church so much, as to manumit such as were bound to their Churches, or to their mannors, which the Church had gotten, and so kept theirs still" (c. 10, p. 129).[1]

In 1391 serfs still appear in England; but before the middle of that century the majority had become hired labourers. There were acts of enfranchisement in the reigns of Mary and Elizabeth. The act of the latter emancipating serfs in 1574 on certain manors was one of the last.[2]

Even in 1610 James I. appears to have possessed rights over serfs; and serfdom was not finally swept away till the reign of Charles II.

In Scotland the arbitrary rights of serfdom over the labourers in the salt works endured till the middle of the eighteenth century.

[1] See also on villenage, *Mirror of Justices*, c. 11. p. 209. (Trans. by W. H., 1768.)

[2] Queen Elizabeth is reported to have commissioned Lord Burleigh and Sir W. Mildmay to inquire into the condition of the villeins on her domains in Cornwall, Devonshire, Somerset and Gloucestershire, and make such as were born bond compound for their freedom. (*Dr Truster*, quoted in Bell's *Feudalism*, p. 259.)

CHAPTER XXII.

CHIVALRY.

THE phenomenon of chivalry is one of the most singular in history. As an ideal of character and life it is quite distinct from any classic ideals, and not entirely corresponding either to the German or Christian conception. It may be said that the world of the Middle Ages was peculiarly false to its chivalric ideal. But the same may be said of the relations of the classic world to the Stoic standard, or of the Christian world to its model. Still, for some centuries—from certainly the eleventh to the fourteenth—the chivalric ideal was that of the great body of martial young men of the higher classes of Europe, and exerted a very manifest influence on manners and morals. It softened the cruelty of war in a barbarous age, led the popular mind away from material ends to certain ideas, sometimes whimsical, but more often generous and noble; it strengthened the position and power of woman, cultivated some of the purest virtues, and formed a conception of character which has come down into modern society, and influenced countries where feudalism was never known.

To determine the part which Christianity had in chivalry, we must examine the customs and received ideals of the latter.

The initiation of the knight was essentially religious in

form ; but the outward ceremony seems to have descended from the ancient Germans. Tacitus tells us that the young German who aspired to be a warrior, was brought into the midst of the assembly of the chiefs, where his father, or a relative, solemnly equipped the youth for his future vocation, with shield and javelin. The act was looked upon as a rite of religious solemnity. So chivalry taught that the youthful knight was to enter on his calling under religious ceremonies. He was first divested of his clothes and put into the bath as an emblem of purification ; then a white robe, symbol of purity, was wrapped around him ; next a red robe, symbol of the blood which he should shed for the Faith, and of the blood shed for him ; and finally a black garment was worn, to remind of the death which would be always near him. He was then to fast twenty-four hours, and in the evening to enter the Church and pass the night in solitary prayer, or sometimes in company with his godfathers. The next day his first act was to be confession ; after this, he was present at mass and listened to a solemn sermon on the duties of knighthood ; finally, he kneeled before the altar, his sword was blessed by the priest, and he made solemnly his knightly oaths. Among these was one that "Avarice, recompense, gain, or profit should never oblige the knight to any action, but only glory and virtue." Another, that he would "never fight with more than one against one, and to avoid all fraud and deceit." Another bound him "to conduct a lady or maiden whom he might meet in danger, to a safe retreat, to serve her, protect her, and save her from all danger and all insult, or die in the attempt ; to never do violence to ladies or maidens without their will and consent, although they had been won by arms.[1]

A more formal statement of the knight's oaths is the

[1] Guizot, *Hist. of Civ.* vol. iii. p. 11.

following :—1. I shall fortify and defend the Christian religion to the uttermost of my power. 2. I shall be loyal and true to my sovereign lord the king, to all orders of chivalry, and to the noble office of arms. 3. I shall fortify and defend justice with all my power, and that without favour or vanity. 6. I shall defend the just action and quarrel of all ladies of honour, of all true and friendless widows, of orphans of good fame. 7. I shall do diligence wheresoever I hear that there are any murderers, traitors, or masterful robbers who oppress the king's lieges and poor people, to bring them to the law with all my power.[1]

An old French ballad,[2] quoted by Saint Palaye, says : "You who desire the order of knighthood, you must lead a new life ; devoutly watch and pray, shun sin, pride and villainy, the Church you must defend, the widow's cause and the orphan's undertake, be hardy and loyal, and plunder nothing from others—thus must the knight guide himself."

The mother of the celebrated knight, Bayard, is said to have uttered these words when he received his sword : "Serve God and He will aid thee ; be sweet and courteous to every gentleman in divesting thyself of all pride. Be not a flatterer or talebearer, for this kind of people come not to great perfection ; be loyal in word and in deed ; keep thy word, be helpful to the poor and orphan, and God will reward it to thee."[3] The young aspirant for knighthood was not uncommonly trained to serve in some

[1] *Selden*, quoted by Mill, *Hist. of Chivalry*, p. 153.

[2] Vous qui voulez l'ordre de chevalier
Il vous convient mener nouvelle vie ;
Devotement en oraison veiller,
Peché fuir, orgueil et villenie, etc.

[3] Servez Dieu et il vous aidera ; soyez doux et courtois à tout gentilhomme en ôtant de vous tout orgueil ; ne soyez flatteur ni rapporteur.

noble family, and was thus early taught one of the virtues of chivalry—a dignified obedience, and a subordination to elders and superiors, which had no mixture of obsequiousness.

The Helden-Buch, an old authority on Chivalry, says of the duties of knighthood :—

"The Princes young were taught to protect all ladies fair,
Priests they bade them honour and to the mass repair;
All holy Christian love were they taught, I plight;
Hughdietrich and his noble queen, caused priests to guide them aright." [1]

The ideal of knighthood is thus given in an old chronicle, translated by Bullfinch : "Then King Arthur stablished all his knights and to them that were not rich he gave lands and charged them all never to do outrage or murder and always to flee treason; also by no means to be cruel, but to give mercy unto them that ask mercy, upon pain of forfeiture of their worship and lordship; and always to do ladies, damosels and gentlewomen service, upon pain of death; also that no man take battle in a wrongful quarrel for no law or any world's goods. Under this were all the knights sworn of the Table Round, both old and young; and at every year were they sworn at the high feast of Pentecost."

The Church itself strove in every way to confirm these ideas. Thus the Council of Clement made solemn declaration that every noble person should, at the age of twelve, take solemn oath before the bishop to defend to the uttermost widows and orphans; that women of noble birth, both single and married, should enjoy his special care, and that nothing should be wanting in him to render travelling safe, and to overthrow tyranny.[2]

[1] Quoted by *Mills*, p. 224.
[2] *Ibid.*, p. 216.

The translator of St. Palaye's "Memoirs of Ancient Chivalry," says eloquently: "Women in particular, ought to hold these ancient writers on chivalry in high esteem, for the deference they paid to modesty and the same they so liberally bestowed on virtue. They taught generous firmness, judicious observance of superiors and constant love to unite in the same hearts. They taught to honour the valiant, to attend the wounded, to relieve the distressed and to dispense the sweet solace of cheerful and gentle manners to all around them; they taught them to respect themselves and to prefer others; to be silent observant, and industrious in youth, graceful and dignified in maturity, venerable in age and lamented in death." Foulque, a young knight, is thus described by St. Palaye[1]: "He is eager to *expand* his heart and to diffuse his wealth to all who approach him and ever without partiality or limitation to all the world, the declared enemy of injustice and of all who dare to be its patrons. The being unable to redress wrong is his sole cause of grief; if this ever happens, he is inconsolable. He is taught[2] that simplicity and modesty alone gave a lustre to victory and he has been directed from a child to be the last who should speak high things and the first who should do them, to be mild among the aged and stout among the brave, and that he can never praise himself too little or others too much." Spenser gives us the same ideal in his "Red Cross Knight":

"And many hard adventures did achieve
Of all the which they honer wonne,
Seeking the weak oppressed to relieve,
And to recover right for such as wrong did grieve." [3]

[1] *St. Palaye*, p. 67. [2] *Ibid.*, p. 31.
[3] *Fairy Queen*, iii. 1–3.

An old French ballad says :—

"A true knight the people must defend
And his heart's blood for the Faith expend."[1]

Chaucer also thus pictures the knight—

"A knight there was and that a worthy man
That from the time he first began
To riden out, he loved chivalry
Truth and honour, freedom and courtesy.
* * * *
And tho' that he was worthy, he was wise,
And of his port as meek as is a maid,
He never yet no villainy ne said,
In all his life unto no manner wight ;
He was a very gentle perfect knight."[2]

One of the first virtues taught the knight, which has greatly influenced modern warfare, was pity for his enemy. It was a common phrase, that "a warrior without pity was without worship." "In all the wars of chivalry," says the historian[3] of Brittany, "true soldiers never injure the tillers of the ground."

The celebrated knight, Du Quesclin, is reported to have said on his death-bed to his companions in arms : "Neither the clergy nor women nor children are your enemies."

Chevalier Bayard, being told that it was permitted to live in an enemy's country upon the inhabitants, replied : "It is true, but I think we ought not to do all that is permitted ; the right of war is one thing, the right of justice another. I rebuke not what others do, but I will not do it myself."[4]

The courtesy and pity of the knight evidently entered

[1] Ils doivent le peuple defendre
Et la sange pour la foi espandre.
[2] Prologue *Canterbury Tales.* [3] *Argentre.*
[4] *St. Palaye*, p. 196.

into practical affairs and became characteristics of warfare in certain countries. "King Edward," says Froissart, after the battle near Calais (1346), "sat down to supper and made the captive French knights sit down also, greeted them honourably and ordered them to be served with the first course, while the gentle Prince of Wales and the knights of England were served with the second course at another table." To the knight who had nearly killed him, King Edward said : "I have never found in battle any man who man to man hath given me so much trouble as thou hast done, I therefore give thee the prize by a just decision above all the knights of my court." The courtesy of the Prince of Wales to the French King John as prisoner after the battle of Poictiers is too well known to need recounting. The English prince constantly refused to sit down at the table of his captive, and gave him the highest honours.

"Can it be conceived possible," says Froissart, "that in a hot fire of the squadrons of the French and English met near Cherbourg (1379), the knights and squires having dismounted to fight closer, stopped in the midst of these furious transports to give one among them who remained on horseback the leisure to challenge that knight among his enemies whom he esteemed to excel the most in love." This historian relates again that after a battle between the French and English, in 1344, "the English dealt like good comrades with their prisoners, and suffered many to depart on their oaths and promises to return again on a fixed day to Bordeaux."[1] After the battle at Otterbourne, the Scots are said to have set their English prisoners to ransom, and every man said to his prisoner : "Sir, go and unarm yourself and take your ease," and so made their

[1] *Froissart*, i. 107.

prisoners good cheer as if they had been brethren, without doing them any injury.[1] The chivalric custom of ransom undoubtedly mitigated to a great degree the horrors of war in the Middle Ages. The knights were punctilious to the last degree in keeping the pledges made to their captors. Thus the Duke of Gueldres is said to have been captured by a squire of low degree and carried to his stronghold. The forces of the duke approaching, the squire made him promise that he would come to him wherever he might be on a fixed day and remain his prisoner till ransom was paid. The duke was immediately liberated by his comrades, but held himself bound by his pledge, and after months of delay and against many remonstrances, penetrated the enemy's lines and delivered himself to his captor, from whom he was subsequently ransomed. As an instance of knightly manners, the romance of Farumbras relates that the famous knight Oliver, in a battle with the Saracen cavalier Farumbras, assisted his foe to lace his helmet, and before they fought, both bowed politely to one another.

Such an action as the following, related of the wars of Robert Bruce, shows what a humanizing reality chivalry might be:—

"The king has heard a woman cry:
He askèd what that was in hy (haste)
It is the layndar (laundress) sir, said one,
That her child-ill (bed) right now has taen,
And must leave now behind us here,
Therefore she makes an evil cheer.
The king said, Certes it were pity
That she in that point left should be,
For, certes, I trow there is no man
That he no will rue a woman than.

[1] *Froissart* ii. 108

His hosts all then arrested he
And gert a tent soon stinted (pitched) be
And gert her gang in hastilie
And other women to be her by
While she was delivered, he bade,
And syne forth on his way's rade;
And how she forth should carried be,
Or he forth fare (journeyed) ordained he;
This was a full great courtesie
That swilk a king and so mightie
Gert his men dwell on this manner
But for a poor lavender."[1]

Writing of knightly courtesy, Froissart says, "there is no pause between them (the English and Scotch) as long as spears, swords, axes, or daggers will endure. When one party hath obtained the victory, they then could glorify in their deeds of arms, and are so joyful that such as are taken, are ransomed ere they go out of the field, so that shortly each of them is so content with the other, that at their departing, they will say courteously, God thank you!"[2] That incident of Sir Philip Sidney, the chevalier of more modern days, refusing the cup of cold water when dying that he might give it to a wounded soldier, will probably never depart out of human memory. It shows what Christianity can do, acting on the traditional habits of the gentleman and soldier.

The chivalric ideal forbade all violence to the prisoner. An Italian writer of eminence even blames the soldier who struck the tyrant of Padua, "since it is as vile an act to wound a prisoner whether noble or otherwise, as to strike a dead body."[3]

[1] *The Bruce*, x. 1, 270. This humane incident is said to have occurred in Robert Bruce's campaign in Ireland, in 1319.

[2] *Froissart*, ii. 142.

[3] . . . quam gladio cædere cadaver. (*Rolanderius.*) Quoted by Hallam.

The model of the knight was that of exceeding gentleness. Arthur is described as replete with all grace and virtue, "for he is free, meek and gentle as a lamb."[1]

A common motto of a noble family in France was "the braver the milder" (*quo fortior eo mitior*).

When the chronicles picture a knight wandering in a wilderness and asking his way of some cowherd, they describe him as riding away "while commending the lad to God." When King Arthur met some unknown ladies in the forest, the biographers relate that "as soon as he saw them, he lyghted downe of his hors and ryght sweetly saluted them."

Of Rodrigo it is said that,—

> "Journeying on he greeted whom he met
> With such short interchange of courtesie
> As each to other gentle traveller gives."

Hospitality was equally a duty with courtesy. "Then it was," says Perceforest, "that in Great Britain charity of manners reigned in all; noble dames and gentle knights placed on the tops of their castles a helmet, as a sign that all good knights and worthy ladies travelling that way should enter as freely into their castle as if it were their own." Handsome presents were given to the guests, "but the courtesy they learned in those castles was above all riches; no spirit of discord or peevishness was ever allowed in these knights to one another. Their manners displayed every kind of friendship and goodwill."[2] "Nothing was small or despicable in the eyes of a knight, if it comprehended the welfare of an individual; if he in his voyage or expedition received the hospitality of the meanest person, gratitude would never suffer him to consider that person but as a noble and generous benefactor; he declared himself for ever his knight, and swore to renounce all the

[1] Quoted by Digby. [2] *St. Palaye*, p. 282.

glory that could be proposed to him, to acquit himself of the debt to defend, protect, and succour him in time of need."[1]

The following passage shows the Norman ideal of chivalry in the twelfth century. Geoffrey says of the reign of King Arthur: "Britain had arrived at such a pitch of grandeur that in abundance of riches, luxury of ornaments, and politeness of inhabitants, it far surpassed all other kingdoms. The knights in it that were famous for chivalry, wore their clothes and arms all of the same colour and fashion; and the women also, no less celebrated for their wit, wore all the same kind of apparel, and counted none worthy of their love but such as had given proof of their valour in three successive battles. Thus was the valour of the men an encouragement for the women's chastity, and the love of the women a spur to soldiers' bravery."[2]

The brotherhoods in arms were one of the remarkable features of chivalry, undoubtedly a survival of German customs. There is said to have been one association called the "Order of the White Lady with the Green Shield," whose especial object was to restore to ladies, property taken from them by unjust plunderers.

A celebrated cavalier, named Hugh de Carvalai, being forced to separate from his brother in arms, Boucicaut, is related by the Chronicle to have thus spoken: "Gentle lord, we who have been together in happy companionship, have had the same wills, the same conquests, and the same joys; nor has either received a joy that the other has not partaken of. But in the account, I think, I have received more from you than I have given; therefore I pray you that we may settle, and what I owe you I will pay or assign over to you."

[1] *St. Palaye*, p. 228.
[2] Quoted in *Troubadours, etc.*, p. 250, by H. W. Preston.

"This is a sermon indeed!" answered Bertrand. "I have never thought of this account, nor know I whether I am indebted to you or you to me, but I pray you, as we are about to separate, let us be quit therein. But if we meet again, we will make a new debt and will have it written; it now only remains for each of us to act nobly, and for you to follow your master. May that affection which hath ever been, continue with us; and since it must be so, in love let us depart."[1]

Of these fraternities the old ballad says,—

"From this day forward ever mo'
Neither fail either for weal or woe,
To help other at need:
Brother be now true to me,
And I shall be as true to thee!"

The ballad then pictures the knights as vowing never to injure or villify each other, and to share one another's dangers and trials.

Froissart says, that there was a bond of brotherhood among all knights, and that "nobleness and gentleness ought to be aided by nobles and gentles." It was evidently a custom among them that no ransom should be set so high that the knight could not pay it with ease, and maintain a suitable rank afterwards.

In the tribunals of justice, the title of knight was especially respected, it being presumed that those who had borne it were always disposed to defend the cause of right. For this very reason, when condemned for any offence, the knight paid a double fine.

The devotion to ladies was the crowning grace of chivalry. This respect for the sex went so far that an act is on record of James II., of Aragon, that any man,

[1] *St. Palaye*, p. 224.

whether soldier or civilian, native or foreign, travelling through the kingdom in company with a high-born lady, should be safe from all attack or pursuit, unless he were a criminal under the charge of murder.[1]

"You should elect," says an ancient chivalric history, addressing the young knight, "a lady of noble blood who has the ability to advise and the power to assist you; and you should serve her so truly and love her so loyally as to compel her to acknowledge the honourable affection which you entertain for her. . . . But he who loyally serves his lady will not only be blessed to the height of man's felicity in this life, but will never fall into those sins which will prevent his happiness hereafter. Pride will be entirely effaced from the heart of him who endeavours by humility and courtesy to win the grace of the lady. The true faith of a lover will defend him from the other deadly sins of anger, envy, sloth and gluttony; and his devotion to his mistress renders the thought impossible of his conduct ever being stained with the vice of impurity."[2] There can be no doubt of the capacity of the knight of chivalry for this pure, unsensual devotion to his mistress. The romances, chronicles, and histories are full of instances of it, and it certainly formed the ideal of great numbers of young men of the higher classes. Each sex too elevated the other, as the "Romance of the Rose" says. "The better the chevaliers the better the ladies, and the more chastely did they love."[3]

[1] Statuimus quod omnis homo, sive miles sive alius qui iverit cum dominâ generosâ salvus sit, etc. (Quoted by *Hallam*, 3, 375.)

[2] *L'Histoire, etc. du Petit Jehan, etc.*, 1, 36.

[3] Les chevaliers mieux en valoient
Les dames meilleures étoient
Et plus chastement en vivoient.
—*Romance of the Rose.*

The peculiar home of chivalry was France and England. If we may trust Froissart, the Germans were too rude and covetous in the Middle Ages, to feel powerfully the especial influences of the system. "Their excessive covetousness quencheth the sense of honour."[1] "When a German hath taken a prisoner, he putteth him into irons and hard prison without any pity, to make him pay the greater penance and ransom."[2] No chivalric spirit checked, in Teutonic countries, feudal licentiousness, and it was the democratic influence of the cities rather than the generosity and chivalry of the knights, which protected the people from oppression. In Italy, too, there was little influence of chivalry to soften the barbarisms of war or raise the position of woman. The frequency of cruel massacres in the Italian wars and of assassination in time of peace, shows how superficial was the power of this ideal. Even in Spain, the model knight, the Cid, is described as cheating without scruple the unfortunate Jews who had lent him money. All the knights, too, were bigoted to the last degree. That "sainted knight and most Christian king," Louis IX., is said thus to have instructed his knights: "Argue not with an unbeliever, be he infidel or heretic, but thrust the Christian lance or sword into his body as fast and as far as you can!"[3]

Still, from all the above and innumerable similar extracts from ancient chronicles, ballads and histories, there comes forth a very distinct ideal of character, which unquestionably exceedingly influenced the higher classes of the Middle Ages, and has not yet lost its power. It is a conception of a character, self-centered, ruling its

[1] *Froissart*, ii. 125.
[2] *Ibid.*, i. 435.
[3] . . . mais à bonne espée tranchant et en frapper les médisans et mescreans, etc. (*Joinville*, i. 23.)

life by an elevated standard of self-respect, the elements of which are unshaken fidelity to a pledge, indifference to danger and hardship, generosity to the weak, forgetfulness of self in small things, and devotion to certain ideal and noble ends, as the main objects of life. There go with it too, in its highest forms, unselfish devotion to woman, courtesy and consideration to the lowest and poorest, an eager passion for adventure, danger and warfare in a good cause, and a supreme consecration to some supposed supernatural guide or inspirer. It need not be said that the highest moral traits of this ideal are an inheritance from the Faith whose influence we are studying. They bear the clear traces of their origin. Other and more earthly features belong to the vigorous and ardent temperament of the ancient Germans.

By what means could pity for the unfortunate, generosity to the enemy, charity for the widow and orphan, unselfishness and consideration for others' feelings and unswerving truthfulness, be taught the wild soldiers of the Middle Ages, as by the Gospels?

The ideal before them, though mingled with many earthly qualities, was a Christian one.

The defects of this character, as history has described them, are but too well known. The knight cared most of all for his class, and soon began to be indifferent to, or to oppress, the common people. Even the chivalric times are stained with terrible acts of cruelty and brutality against labouring men and citizens. The enthusiastic devotion to woman degenerated into a licentiousness which contaminated a great part of European society, and affected considerable portions of literature. The barbaric jousts and tournaments of the Middle Ages, with the class feeling cultivated by chivalry, transmitted the modern duel, one of the barbarisms which still endures in modern

society. The spirit of chivalry long supported feudalism, which was so great an obstacle to popular liberty and to material progress. The crusades were an offshoot of chivalry, and though they indirectly removed so many abuses, and awakened in a few directions the human intellect, yet they brought untold calamities on Europe, and strengthened the power of bigotry and superstition for centuries.

It is of course very difficult to say how far chivalry, as an institution, was a reality. It certainly was an ideal and a sentiment, and left a deep impress on society among the upper classes. But to what extent the great body of knights were governed by their vows and professed principles, and whether this devotion, purity and disinterestedness existed more in the fancy of poets than in the real life of the Middle Ages, is a question not easy to determine.

Whatever in the chivalric ideal was a direct product of Christian influence, has endured, and still exerts its power. The high respect for woman, a combined result, as we have often said, of old German habit and Christian teaching, still remains and is strongest in non-feudal lands. The remarkable respect and courtesy shown to women throughout the United States, is at once a chivalric and Christian inheritance. If any one would find a modern "survival" of the journeys of the knight of chivalry with his fair ladye through a savage wilderness, let him follow Miss Bird's ride[1] through the Rocky Mountains for six hundred miles, accompanied by desperadoes and wild trappers. Her influence in those solitary camps is precisely the chivalric ideal and the Christian reality.

The error of chivalry was in centering all things on self-regard and the opinion of a class.

[1] *Ride through the Rocky Mountains.*

Chivalry as an institution has passed away :—

> "The knights are dust,
> And their good swords are rust;
> Their souls are with the saints we trust."

But the ideal of character endures. Christianity, acting on the German temperament, has contributed this ideal to the humane and moral progress of the leading races. It has its definite and peculiar features.

A character and life, where the smallest stain on integrity is felt as a sin; where the "word is as the bond;" where the weak and unbefriended, the orphan and oppressed always claim the immediate and unhesitating defence and support; where woman is held in purest honour; where an habitual consideration and gentle courtesy, especially for inferiors, govern the feelings and manners; where there is a capacity for true friendship and for self-forgetting services, and the habit of hospitality; where high aims and generous purposes, give an inherent and unconscious elevation and dignity to the whole nature; a character in which there is a silent heroism and courage that would face death and every ill cheerfully, in a cause pleasing to the Master—this still lives.

Certainly true chivalry has not died out in modern days, and is more distinctly Christian than ever before.

CHAPTER XXIII.

RESUMÉ OF REFORMS IN THE MIDDLE AGES.

THE "*Gesta Christi*," the achievements of Christianity, are not like the victories of a great general, distinct conquests in a given place, or on a fixed date; they rather resemble the triumphs of science or of civilization. Here and there, indeed, a definite and convincing step will be made in humane progress, but in general, the minds of man will become first silently imbued with Christ's principles and be personally transformed by affection for Him. Then, as love and unselfishness more and more control their lives, and the responsibility with reference to a future life grows, and the habit increases of living for distant and impersonal good, certain great abuses which they have hitherto supported through ignorance and selfishness, will drop away, and gradually the great injustices of human society will be either be uprooted by such men, or will melt away under the fervour of their benevolent sympathies and the example of their upright lives.

Of many great social evils, it is often difficult to say when they came to an end. They disappeared before the new Spirit in the world.

The victories of Christ are silent victories, won in the individual heart and life. No history chronicles them. Their fruits are seen later in the lessening or overthrow of great social abuses, and in the gradual growth of justice,

benevolence, purity, truth, and all those feelings and practices which specially result from Christian teachings. The Spirit of God everywhere works in human society, and there is a "natural progress" apart from Christianity. Many forces, too, of selfishness or of the intellect have aided in the final results of human progress. The tendencies of commerce, the struggles of kings with barons, the associated life in cities, the opening influences of science, have all worked throughout the Middle Ages to advance mankind; but no help to right living and towards a more perfect state of society has ever been found like the religion of Jesus.

(1) Its first and most powerful effect on barbaric and half civilized society in Europe was the new position which it gave to woman, and the sacred value it attached to marriage. As centuries go on, the test of advancing civilisation in each country is the advancement in the social, legal and political position of the weaker sex. The influence of Christianity from the beginning tended to make woman in all appropriate things the equal of man, to throw her influence into every department of life, and even to surround her with a certain sacredness. In this, we need hardly repeat, the new Faith was aided by German habits of thought. Christianity purified the morals of woman, bound her to sacred duties as wife and mother, pledged her to labours of humanity when single, and everywhere sought to make her worthy of the homage she began to inspire. It changed the low idea of marriage, common even in the German tribes. It protected woman's rights and her property, and throughout Europe, encouraged the system of dower, which was so important a safeguard in a wild age. Family life in these disturbed centuries was first purified by the religion of Christ, and from that has sprung whatever of good now exists in

European social life. The best human condition which has been transmitted, which gives the truest fore-gleam of a higher earthly life yet to be attained, is marriage; and no power known in history has done so much to elevate and strengthen that as the teachings of the great Master. The "free marriage" and easy divorce customary throughout Europe in the early Middle Ages, were especially struggled against by the influence of Christianity; and whatever is stable in the union of husband and wife has been won by it against masculine selfishness and caprice.

The reactions of the human mind at this period are not chargeable on Christianity; neither the asceticism and celibacy of one portion of society nor the strictness of the canon-law. The Gospels give no countenance to any of these extremes.

(2) Human society rises out of its low estate, not merely by elevating woman, but also by curbing the barbaric passion for blood-revenge. The first influence of a love and faith towards Jesus Christ is to lead men to imitate and obey Him by controlling revenge and hatred. This religion accordingly acts on the half-savage tribes by making legal satisfactions take the place of blood-revenge and feuds, and elevating law in place of violence. In doing this, it may sometimes sanctify capital punishment, as placing a legal retribution higher than "blood-money." This, the first step of barbaric Europe from anarchy and violence to a condition of law and order, was plainly assisted by the new Faith.

(3) A feudal and wild society falls naturally into "private war," where each chieftain fights "for his own hand," but under definite forms and laws. Europe, as we have seen, was nearly reduced to anarchy under these uncontrolled habits. The figure which appeared in the storm, and

quieted, if only for a time, the waves of strife, was CHRIST. It is a touching history—to read of the plundered peasants, the desolated towns, the wasted fields, the weeping widows and orphans under this curse of unrestrained war, and then of some simple, enthusiastic believer, who holding aloft an *Agnus Dei*, goes from village to village preaching, as if a new truth, the doctrine of human brotherhood, the "Peace of God," until all men are inspired by a new spirit, and for months or years the bloody swords are left to rust, the homes of the poor are unplundered, and an unwonted peace of God falls on a land drenched with brothers' tears and blood. Or the messenger of religion declares certain places and certain days sacred to peace, and the wild soldiers and pirates are awed into seeming quiet, and the poor and down-trodden have a brief respite from the savage tempest, and society, under religion, gets its first experience of peace. Surely the most materialistic of sceptics reading of that "Peace of God" of the Middle Ages, and of that sacred person, the Friend of man, calming the bitter storms of human wrath and strife, must be grateful that even the so-called "myth" of a Jesus survived, and that it could thus control, even for a moment, the passions and hate and blood-thirst of men.

(4) The arbitrations (*Austräge*) of the Middle Ages, are the fruits at once of the Christian and of the commercial spirit: they show the first settlement of European society, and foretoken that higher system of Christian arbitration, which shall yet reform the relations of nations. For in the light of the teachings of the great Master, and of the higher reason, it cannot be claimed that "private war" is less justifiable than "public war," as a means of redressing injuries.

(5) Among the great impediments to progress in Europe through the Middle Ages, and the brutalizing influences,

were the unreasonable and cruel methods of obtaining truth and determining justice in both civil and criminal cases. The "wager of battle" and the "ordeal" were opposed from the beginning to the spirit of the "Religion of humanity." The teachings by Christ allowed no such mode of testing facts or obtaining justice, as single combat; and superstitious tests have no support in His words or in the spirit of His life, The purest among His followers in every age have objected to them and argued against them. As His spirit has slowly imbued more and more individuals of all classes, the barbarous "judicial duel" has dropped out of use, even as His influence in modern times has swept away the "duel of honour." To one inspired by Him the appeal to irregular methods of ascertaining the will of God, is an irreverence to the Father of all, and opposed to the very spirit of His life. The abolition of the ordeal is not indeed one of the most apparent *Gesta Christi*, but it can be distinctly traced to Him.

(6) Had the "Son of Man" been in body upon the earth during the Middle Ages, hardly one wrong and injustice would have wounded His pure soul like the system of torture. To see human beings, with the consciousness of innocence, or professing and believing the purest truths, condemned without proof to the most harrowing agonies, every groan or admission under pain used against them, their confessions distorted, their nerves so racked that they pleaded their guilt in order to end their tortures, their last hours tormented by false ministers of justice or religion who threaten eternal as well as temporal damnation, and all this going on for ages, until scarce any innocent felt themselves safe under this mockery of justice and religion,—all this would have seemed to the Founder of Christianity as the worst travesty of His faith and the most cruel wound to humanity.

It need not be repeated that His spirit in each century struggled with this tremendous evil and inspired the great friends of humanity who laboured against it. The main forces in mediæval society, even those which tended towards its improvement, did not touch this abuse. Roman law supported it; Stoicism was indifferent to it; Greek literature did not affect it; feudalism and arbitrary power encouraged a practice which they could use for their own ends; and even the hierarchy and a State Church so far forgot the truths they professed as to employ torture to support the "Religion of Love." But against all these powers were the words of Jesus, bidding men "Love your enemies!" "Do good to them that spitefully use you!" and the like commands, working everywhere on individual souls, heard from pulpits and in monasteries, read over by humble believers, and slowly making their way against barbaric passion and hierarchic cruelty. Gradually, in the sixteenth and seventeenth centuries, the books containing the message of Jesus circulated among all classes, and produced that state of mind and heart in which torture could not be used on a fellow-being, and in which such an abuse and enormity as the Inquisition was hurled to the earth.

(7) The Jewish religion and the gospel of Jesus both taught protection to the stranger, and help to the unfortunate. The old abuses inflicted on the stranger and the shipwrecked accordingly melt away before the new teachings. Almost every code in Europe, Charlemagne's capitularies, the laws of the Northern tribes, the *Sachsenspiegel*, the Anglo-Saxon laws and others, contain touching reference to the scriptural commands in regard to the stranger and "far-comer," and enforce the duties of hospitality and mercy. The shipwrecked and homeless are to be gently and mercifully dealt with, even as all men hope

to be dealt mercifully with at the great tribunal. The change from that century when a stranger in England was shut up in jail like a thief, or a foreigner (*aubain*) in France became a serf of the seigneur, to the comparatively hospitable laws of the seventeenth and eighteenth centuries, and the contrast between the age when vessels were brought to wreck by false lights, and all shipwrecked were slaves and their property fair plunder, to the age when the laws of all nations protect the shipwrecked, and almost all civilized peoples feel it a duty to help such unfortunates,—these changes are among the most apparent and blessed of the *Gesta Christi*,—the achievements of Christianity. Jesus in human annals, were He less than He is, might well be the patron-saint of the stranger and the shipwrecked.

(8) The progress of the Middle Ages was largely assisted by their codes of law. These early efforts to establish order, restrain passion, cultivate self-control and promote humanity, are deeply stamped with the teachings of the Master. Some of these codes, like the Anglo-Saxon laws, seem like religious and moral exhortations, rather than a body of legislation. Nearly all of them call up the sanctions of religion to enforce earthly injunctions: some appeal directly to the teachings of our Lord, or the Bible: all inculcate the gospel lessons of purity, good-will, integrity, honesty, truth and neighbourly kindness, not alone as moral and legal duties, but as portions of religion; as pleasing Him who embodied such virtues, and as part of men's responsibility to God.

The Roman law too, wherever modified by Christian influence, carried down the spirit of the humane Teacher through ages of lust, cruelty, and barbarism. That it did not accomplish more is scarcely to be wondered at. Laws can only effect their best work when they represent the

united opinion and feeling of society. Christianity had not yet sufficiently impregnated individuals to transform society and make laws one of the manifestations of religion.

(9) Along with improvement of the laws in the Middle Ages, went advance in education. Christianity opened men's minds to all truth; it produced that humility which is the best guarantee of the intellect against conceit and pride,—often the greatest obstacles to discovery and progress; it withdrew the faculties of superior men from pursuits tending to damage and destruction, towards those which would benefit humanity. The same result was experienced in the "Dark Ages," which has often been since, that a high moral advance is favourable to the intellect. When the spiritual and moral faculties and sensibilities are elevated, the probability is that the other powers of the soul will feel their inspiration, and reason, judgment and imagination be elevated by the same influences.

The mere turning of the mind by thousands of the youth of Europe from war to matters of religion was an immense gain to the intellect. There is only a certain amount of vital force in a generation, and this during many centuries was in some degree drawn from plans of mutual injury, to truths and thoughts connected with the Christian faith. The human mind could not but gain a great advance from this influence alone. To this effect of religion was added the power of the Church, exerted, as we have seen, in founding schools and institutions of learning, and the influences of monastic life encouraging the study and copying of the classics. Against this latter is to be weighed the depressing and retrograding power of bigotry and superstition, which found their appropriate home in the monastic life, and indeed all the opposition of the Church to pure science.

While recognising the elevating force of the Christian faith on the intellect of Europe during the Middle Ages, we should never fail to acknowledge the remarkable influence on intellectual progress in the revival of classic literature and of Arabic science.

(10) One of the great steps in humane progress in these centuries, and one on which the influence of the truths preached in Palestine is peculiarly apparent, is the gradual diminution or cessation of serfdom and slavery. The gospel of Christ in its pure form is not consistent with permanent slavery. His early ministers were called "the brothers of the slave." They felt "for them in bonds, as those in bonds with them." Wherever He is truly loved and revered, there the fetters of the slave are broken. This power is shown at this period in the humane legislation of various countries towards serfs and slaves, based often on the avowed motive that "he for whom Christ died, ought not to be held in bondage." It is shown in the innumerable forms of will and bequests where bondsmen are liberated *pro remedio animæ*, for the salvation of the soul, and to prepare for coming judgment. It is proved by the general influence of the clergy in emancipating captives; and in the gradual change of slavery into serfdom, and of serfdom into freedom. Sometimes a great act of emancipation, like that of the city of Bologna, avows the religious impulse. Sometimes an eloquent preacher breaks up by his appeals the slave trade, as was done by Bishop Wulfstan, in Bristol, in the eleventh century. More often the minds of men and women in all classes become touched by the truths of the Gospel, until they feel that to hold a fellow-being in slavery or serfdom is contrary to Christ's commands, and they privately manumit; or they permit laws to be passed which gradually relieved the oppressed of their burdens; or they accept some form of compensation for the services due to them, and the injustice slowly melts away. As the Scriptures circulate among the peasants, these become filled with the new feelings of human dignity imparted by the teachings of the Gospels, and they everywhere demand their liberty—in terrible outbreaks which measure the burdens under which they suffered; yet these violent protests, though met with greater violence, bring after them new rights and liberties for the serf. Throughout the Middle Ages conscience was on the side of manumission, as shown in countless death-bed acts of emancipation. The Church itself became a citadel of liberty to the bondman. It is true that other forces worked with the religious motive: the influence of cities and independent communes; the Stoic philosophy as felt in legislation; the struggles of rival powers in the State, and the inconveniences of slavery itself—all these tended towards emancipation. But the great Emancipator of history is Jesus Christ. Where He rules, there all chains are finally broken and the oppressed go free.

(11) It scarcely need be said that all the countless institutions of human compassion and charity, which attempted throughout Europe to relieve the horrible misery following the overthrow of the Roman empire, came from Him. The blessed associations of mercy, the hospitals, asylums, refuges, schools and centres of charity, which everywhere radiated human mercy and goodwill; the lives of beneficence to which so many noble souls devoted themselves; the innumerable actions of benevolence, philanthropy, and heroic self-sacrifice which light up these dark ages—these are all from the "Son of Man"—the true *Gesta Christi*.

And not entirely to be passed over among His grander achievements, are the grace and heroism and humanity infused into Middle Age society, and so into modern life.

by the action of His faith on the German temperament Chivalry has indeed a large proportion of transitory, whimsical and earthly elements; but the humanity infused by it into wars, the respect inspired for women, the courtesy and consideration taught, the grace and gentleness cast over society, the compassion it illustrated, belong to Him who embodied such pure qualities without the alloy of class-feeling, and who, as the "Son of Man," was in sympathy with all conditions of men, and an eternal ideal of compassion to the unfortunate.

It is true that Christianity in the Middle Ages never accomplished what should be appropriately expected of it in the reform of human evils. But various circumstances were peculiarly unfavourable to it as a moral power. It was first made known among degenerate and corrupt races, inheriting the vices and conceit of ages of successful violence and unrestrained lust. It then reached the wild tribes of the north, who were stamped with their own savage qualities, or tainted by contact with Roman depravity. But most fatal of all were the entire overthrow and confusion of society, and the invasion of ignorance and lawlessness consequent on the destruction of the Roman empire; and the formation of a State Church and hierarchy, with the natural paganization of large classes, who were only nominal followers of the great Teacher.

This combination of unfavourable circumstances has delayed the triumph of Christianity for many centuries.

III.

REFORMS IN HUMANE PROGRESS BROUGHT ABOUT BY THIS MORAL POWER DURING THE MODERN PERIOD.

CHAPTER XXIV.

THE POSITION OF WOMAN UNDER MODERN INFLUENCES.

WE have seen in previous chapters that the steady drift of law and custom in Christian countries has been towards "the personal and proprietary independence" of woman, towards equality of rights with man, and a position of high moral and spiritual influence in family and social life.

In the Roman period the *manus* or absolute power of the husband over the wife, yielded to the new spirit abroad and became but a weak authority. Tutelage was done away with, dower was guaranteed, and the right of the wife secured over her personal property. While the moral position of woman in the Christian portion of the empire grew into one of remarkable sacredness and power, the example of Christ and the apostles elevated the feebler sex in the moral field, and threw into their hands the management of many of the charitable and spiritual interests of the new communities of believers.

The Middle Ages brought into the world a fresh sentiment of respect for woman—a characteristic of the Teutonic tribes—to strengthen the Christian feeling of reverence. But the German habit of mind—of measuring civil rights and social position by physical power or the capacity of bearing arms—tended to depress the standing of woman in all countries under the influence of Teutonic customs;

while the ascetic and Oriental theories in regard to marriage and woman which had arisen in the Church also combined to make the legal and social status of the female sex below that resulting from the example and teachings of the Master, and below what was suited to the conditions of progress.

The greatest inequalities and injustices rested upon woman in the oldest and most characteristic Teutonic tribes, the Scandinavians, and among the Norman-English. Greater privileges were allowed her among the German tribes of Central Europe, and in countries where Roman law (Christianized) had a greater power. But here again, ascetic influences, under the canon law, depressed her position, especially in the married state One ideal, however, survived throughout Europe among the higher and more martial classes, which everywhere exalted the weaker sex and produced an effect unknown to antiquity, even greatly influencing modern society. To chivalry woman is indebted in the Middle Ages for a position she had never before enjoyed in history, which gave her a charm almost unknown till then, and which spread over a society steeped in barbarism a grace and refinement that have come down to our day.

It will be seen then that the position of woman from the advent of Christianity till the modern period, has been a composite one in civilized countries. In some countries she has lost personal independence and control of property in marriage; in others she has retained her proprietary power, and has been substantially independent of her husband; again in others she has entered into a partnership in property and interests in marriage.

In some regions, under feudal rights, her hand had been under the control of her guardian and became venal. In others she had been under the guardianship of the king

alone; and finally she achieved such independence as to control her property herself and govern her own vassals.

Tutelage continued much longer in some parts of Europe than in others; and canon law in many portions of the Continent brought the wife under a peculiar subjection, though leaving the maiden singularly free.

The Christian idea we believe to be the entire equality of man and woman in rights and responsibilities, though this must be limited by practical necessities and the present condition of society. The drift, in all ages, under the teachings of the Master, has been towards this ideal; but like His teachings in regard to war and utter unselfishness, they must be compromised somewhat to suit the present state of the world. Each age will see an approach towards that happy condition, wherein bond and free, male and female, learned and ignorant, are "one in Him," with equal rights and equal possibilities (so far forth as nature permits).

The modern position of woman, as related to Christianity, is perhaps best tested by her position in the society and under the law of the United States.

The American Union naturally inherited, through England, the old Teutonic ideas in regard to woman's position in marriage. They were certainly not the ideas of the Founder of Christianity, whose few words in regard to marriage and His whole bearing towards women, gave an impression of His tender respect for them, and of His sense of the sacredness and equal value of the tie. Nor are they ideas of the German tribes of the centre and south of Europe, who allowed a much greater independence to the married woman, and more personal rights over her property. Nor are they altogether the principles of the canonists or the advocates of the extreme churchly view.

The ecclesiastical authorities held indeed the theory of the inferiority and subjection of woman in marriage; but

they were equally earnest in favour of the *communio bonorum*, the partnership of property, and of the protection to the woman in securing her dower. Then they held to the idea, which nowhere appears in the English common law, of marriage as an impurity and a degradation to man and woman.

The English common law ideas of woman and marriage evidently came down from the old Scandinavian customs and principles. The sex incapable of bearing arms could not appear in the highest form of legal trial, the judicial duel, and hence must be represented by a tutor or guardian. The husband became the natural guardian of his wife, and both represented and absorbed the person and property of his ward. Legal rights were measured by physical power. Then the archaic idea came in of retaining the property of the woman in her new family, and preventing both her relatives or herself separating it from her husband's. Thus, perhaps, arose the peculiar English idea of the married woman which has come to us in the common law. Under it the wife's legal existence was suspended or extinguished during marriage; her property was sacrificed, and she was placed almost absolutely in the hands of her husband as regards civil rights. Her fortune passed to her husband for his temporary or permanent enjoyment. She could not earn anything for herself, nor in general make any legal contract, sue or be sued, because she was not legally a person.[1] The great dramatist only pictures the common law when he makes one of his characters declare: "I will be master of what is mine own. She is my goods, my chattels; she is my house, my household stuff, my field, my barn, my horse, my ox, my ass, my anything."

The husband, on the other hand, loses little or nothing

[1] Schouler, *Domestic Relations, etc.*

of his independence; but, as a compensation, the law compels him to pay his wife's debts, not only when she acted as his agent, but those incurred before marriage. The husband and wife have each an interest in one another's landed property, but the advantage is always with the husband. The wife has an interest alone after her husband's death, she has none as wife. He is permitted despotic sway. Under the old legal nomenclature he was the *baron*, she the *feme*. If the husband killed the wife, under the old laws, he was tried as if he had killed any other person; but with the wife, the offence was like treason, a more atrocious crime, and she was denied "benefit of clergy." In case of children and real estate left without a will, a son, though younger, inherited before a daughter. The wife's personal property belonged to her husband, which he can bequeath to another; if he dies without will, she has one-third of the personal property if there are children; one-half if there are none. This, however, is a provision derived from the Roman rather than from the old English law.

The husband is absolute master of the wife's rents and profit from landed property during their marriage, and if there are children he retains a life interest in the real estate. If the wife survive, she has only a right to dower, or one-third of the real estate for life. The husband, after his wife's death, has a right of "curtesy" in her estate; but the wife at his death has no such right; she is taxed on other property than her dower, without representation.[1] "The very goods which a man giveth to his wife," says a curious work of the seventeenth century, the "Woman's Lawyer,"[2] "are still his owne; her chaine, her bracelets,

[1] *Blackstone*, i. 445, Note.

[2] *The Lawwes Resolutions of Women's Rights*, p. 129. 1632, London. It should be remarked that Magna Charta protected dower.

her apparell, are all her good-man's goods. If before marriage the woman were possessed of horses, sheepe, corne, Woole, Plate and Jewels, all manner of moveable substance is presently by conjunction the husband's, to sell, keep, or bequeath if he die." [1]

The husband's and wife's legal existence was merged into one, and that was the husband's.[2]

This state of coverture was defined as that of one "covered," or *sub potestate viri*, under the absolute power of the husband. "The Law of Nature hath put her under the obedience of her husband, and hath submitted her will to his," which she is not permitted to contradict during her life.[3] She wants free will as minors want judgment.[4]

Among other singular injustices inflicted on women by this old Teutonic system, is that the wife, at the decease of her husband, was not allowed to administer in preference to his kindred, on the personal estate, though it had once been entirely hers. He, on the other hand, could administer on her estate for his own benefit, and exclude her kindred altogether even from a share in the assets.[5]

If she survived, she had only her own real estate and such of her personal property as he had not appropriated to his own use, and a few unimportant articles ("paraphernalia"). She cannot restrain his rights by will.

Till the reign of William and Mary, Blackstone states,[6] woman by the English common law could receive sentence of death and be executed for the first offence in such crimes as larceny, bigamy, and manslaughter, while a man (who could read) was, for the same offences, subject

[1] P. 130.

[2] Sa feme et lui ne sont fors que un person en ley. (*Littleton*, Liv. ii. sect. 168).

[3] *Baron et Feme*, p. 71.

[4] *Ibid.*, p. 71 (1719).

[5] *Schouler*, p. 61.

[6] Vol. i. p. 445.

only to the burning of the hand or a few months' imprisonment. This, however, is a discrimination against woman as not being admitted to spiritual orders, rather than against her as woman. In case of a daughter's ruin by the deceits of a pretended lover, the only reparation to the unhappy father was through the plea, that she was his servant and that he was deprived of the benefit of her labour, and that the seducer had trespassed on his premises.

"Female honour, which is dearer to the sex than their lives," says this authority, "is left by common law to the sport of an abandoned calumniator," referring of course to oral defamation. The elopement of a wife with a guilty partner took away from her, by an ancient statute, all right of dower. The husband might commit the same offence and still retain a right over his wife's property.

"A poor woman," says the "Woman's Lawyer," [1] "shall have but the third foote of her husband's lands when he is dead, for all the service she did him during the acouplement (a long time and tedious), and if she be extravagant with a friend, this is an elopement and a forfeiture." The criminal conduct of men, the author claims, is not noticed; "they may lope over ditch and dale, a thousand out-ridings and out-biddings is no forfeiture, but as soon as the good wife is gone the bad man will have her land, not the third, but every foote of it." [2]

The husband, too, as in almost all the Teutonic codes, had the right to beat his wife. "Justice Brooke," says the Woman's Lawyer, "affirmeth plainly that if a man beat an outlaw, a traitor, a pagan, his villein, or his wife, it is dispunishable, because by the Law Common these persons

The Lawwes Resolutions of Women's Rights.

[2] P. 146.

can have no action. God send gentlewomen better sport or better companie!"[1]

The tendency of the early English common law, was met in the English legislation, by the influences of right reason, and Christianity. The principles of the Roman law and of equity were early applied to correct the evils and the injustices of the old Teutonic code. The Lord Chancellor's Court or Court of Chancery, which was essentially a Court of Equity, became a court of great importance and of ordinary jurisdiction, even as far back as Edward III. In the reign of James I. adjudication was obtained through this court to secure to the married woman a separate use of her property; and by 1695, it was clearly established that a wife might have her separate estate in trust.[2] Especially during the last hundred years, a doctrine of woman's rights more consonant to humane and Christian ideas has been maintained in the Equity Courts of England. The great truth everywhere urged by the Master, of the distinct personality and responsibility of each human being, has been applied to the woman as wife by these courts, and her equality with man more and more advanced. The Married Women's Property Acts of 1870, 1874, and especially that of 1882, seem to give absolute liberty to the wife of acquiring, holding, and disposing of any property as her separate property; so that even the wages of a married woman in Great Britain, the profits of her literary, artistic or scientific skill, her deposits in savings banks, and indeed all property which may belong to her at marriage, or be acquired by her during marriage, is hers, as if she were a *feme sole*. We do not dwell on these important stages of humane progress, because the American legislation better shows the high-water mark of this drift of ideas and of practices under the power of Religion.

[1] P. 128. [2] Spencer's *Equity Jurisprudence*, p. 596

American Legislation.—The highest fruit of this influence on legislation as to women, is to be seen undoubtedly in the United States, and particularly in the legislation of the State of New York, which has always led in the field of humane administration.

The reforms in this matter seem to have begun in the New England States—especially in Massachusetts and Maine—early in this century. The first object was to secure the independence of wives who were abandoned, or of those whose husbands were convicts, runaways or profligates. A public recognition was made of marriage settlements and of trusts for the wife's separate benefit. Then her right was secured to her of disposing of her property by will, and, in some States, her estate was exempted from liability for her husband's debts. The great and sweeping reforms in this direction, however, date from American legislation in 1848.[1] These laws extend the doctrine of a separate estate for the wife; they provide that her real and personal property shall not be put at the disposal of the husband or made liable for his debts. It continues her sole estate, and she is permitted to receive property in like manner by gift, grant, devise or bequest. This humane and advanced legislation has been imitated and followed. Most liberal provisions have been enacted, securing the property held by a woman before her marriage, and all acquisitions made through her husband or third persons, after marriage. All her earnings are in her own power, and there is almost complete emancipation from marital dominion. She can bequeath by will as if she were single.[2]

In 1860–62, these rights were still farther enlarged.[3]

[1] *Schouler*, p. 209. These are reforms especially in the legislation of the State of New York.

[2] New York legislation. See *Schouler*, [3] *Ibid.*

Married women were permitted entire control of their personal property, and could carry on any trade or perform any labour on their sole account; and their earnings could be invested for themselves. A wife is permitted to sell or convey her own real estate, to sue and be sued, to bring an action in her own name against any person or body corporate, and to make any bond to bind her separate property. None of these transactions bind her husband.

A judgment can be enforced against her separate estate.[1] Of the general position of married women in the legislation of New York, a high authority, Schouler, says, "Married women in that State are well nigh emancipated altogether from marital restraints, so far as concerns their property, while the husband's own rights therein are exceedingly precarious"[2]

A recent case in the courts of New Hampshire, gives a practical illustration of the advanced American view of the position of woman. A husband was sued for slanderous words of his wife against another woman. He took the ground that he was not responsible for the torts of his wife; that her property was not his, nor her earnings his, nor her legal subjection to him any greater than his to her, and that he was no more liable for her wrong doing than she for his. The court sustained his demurrer, stating that "the husbands of these female parties are strangers to the proceedings." The *Boston Herald* (April 15, 1882), quotes thus from Judge Foster's decision :—

"As Judge Foster states it, the woman being thus by the common law utterly within her husband's control, his chattel, his 'ox,' he became personally and solely answerable for her torts, as for the trespasses of his other domestic cattle; and, of course, the law could pursue no other consistent system than that which declared all her contracts absolutely void. Such was the social and legal status of a married woman

[1] *Kent's Comm.*, ii 111, note. [2] *Domestic Relations*, p. 214.

centuries ago; and the change of her condition before the law seems to be much less in England than in New Hampshire. The influences of Christianity and a more widely diffused and higher system of moral and religious education have gradually ameliorated woman's social condition, and elevated her to the state of dignity and importance she possesses to-day. Like all the changes of advancing civilization, this change has been very gradual, but it has been a steady march from slavery to freedom. Herbert Spencer says that in the United States women have reached a higher status in the social structure than anywhere else, and Judge Foster adds that it is equally true that in many of the States, certainly in New Hampshire more than anywhere else, have the legal distinctions between the sexes been swept away." He continues :

"Thus, by progress in the same direction, by changes religious, social, customary, legislative and judicial, the rule of the common law has been abolished and obliterated; and it is no longer possible to say that in New Hampshire a married woman is a household slave or a chattel, or that in New Hampshire the conjugal unity is represented solely by the husband. By custom and by statute the wife is now joint master of the household and not a slave or a servant. The rule now is that her legal existence is not suspended. So practically has the ancient unity become dissevered and dissolved that the wife may not only have her separate property, contracts, credits, debts, wages, and causes of separate action growing out of a violation of her personal rights, but she may enter into legal contract with her husband and enforce it by suit against him."[1]

We have observed how, in the history of the past, Christianity has strengthened the position of the mother.

From the allusion in Justinian's Code,[2] where reverence is enjoined on the sons towards their mother, but no legal rights are given her, and the dictum of Blackstone, that "a mother as such is entitled to no power, but only to reverence,"[3] to the American legislation of 1860, there is

[1] This case has not yet, however, become a precedent. It only shows the tendency of judicial decisions.

[2] *Code*, lib. viii. tit. xlvii. 4. . . . reverentiam autem debitam exhibere matri filios coget.

[3] *Comm.*, i. 453.

a progress which shows the profound power of the ideas scattered by this Faith.

The inferior legal position of the mother in the English courts of law, as distinguished from equity, was no fiction. An English case[1] has often been quoted where a father was permitted by the court to take the children from a blameless wife, and place them under the charge of his guilty partner. Judge Story, even before the reformed legislation, ventured to contradict the presumption of the English law, that the father has any vested right in the custody of the children. But in the United States, such is the power of the humane principles of the Gospels taught in every pulpit and school, the people become imbued with sentiments of justice and mercy before the lawyers or the judges, and legislation has been usually in advance of the courts.

By the legislation of 1860 (afterwards changed), every married woman was declared joint guardian, with the husband, of their children, with equal rights. Earlier statutes gave the custody of the child to the mother where the partners lived separated without divorce. In some States, the preference was given to the mother, where the child was very young. In general by American legislation, the custody of the child is determined by its interests and not the claim of the parents. The mother in a legal point of view may be said to stand on an equality, in most respects, with the father in the more advanced American legislation.

Another peculiarity of legislation in the same direction, is the protection afforded to the young girl against the deceptions of the other sex. In many States, seduction accompanied with promise of marriage is a serious crime, and is severely punished; and the loss to the girl of

[1] *Rex* v. *Greenhill.*

hitherto pure character is not measured by the value of her services to her father or her guardian, but by the higher considerations in the new estimate of woman.

Judge Kent says very justly of all this class of legislation in woman's favour; "The pre-eminence of the Christian nations in Europe and of their descendants and colonists in every quarter of the globe, is most strikingly displayed in the equality and dignity which their institutions confer upon the female character."[1]

The Civil law in such southern portions of the Union as had been brought more closely under the influence of Roman law, secured a remarkable independence to the wife. But the *communio bonorum* or partnership in property, which is a feature of marriage under this legislation, was one of the slow gains won by Christianity;—Roman law having substantially dropped it before Justinian.

In the Middle Ages, where we find this feature, it is a fruit of the religious sentiment, urging justice and equality in the marriage relation. It cannot be regarded, however, as so high a stage of progress, or so pre-eminently Christian, as the position assigned to woman in marriage by the American legislation; for each human being, under the Faith taught in Galilee, is an independent responsible existence having a right from all others to the same justice and consideration which he is bound to extend. Each woman under these teachings has a claim to the utmost exercise of her capacities, and to perfect equality with all others as to rights of property and personal rights. Woman from the earliest times of Christianity held a position of independence and of great responsibility. Marriage under the religious conception is the highest moral union, and whatever is yielded by the one sex is given up from motives of unselfish affection, and the

[1] *Comm.*, vol. ii. p. 187.

claims of the one sex are balanced by those of the other. Accordingly rights of property in both are equal; and personality may be asserted in them, if it be for the highest interest of both.

The progress of the religious sentiment and of right reason will be continually in this direction, towards asserting the absolute legal independence and equality of woman.

It will here be asked: Does not this lead to the share of women in government? Undoubtedly it does ultimately. Christianity by itself no more teaches female suffrage than it does republicanism or free trade. But it throws into human society that sentiment of equality before God, that principle of equal rights and equal responsibility, and of universal brotherhood, which all lead logically to these results. The thorough application and carrying out of Christian principles in human society is a result only to be expected in distant ages. In the meantime it is the part of wisdom to prepare the world for these great changes, and to begin them by slow and careful steps. In the United States, and England, a useful beginning has been made in regard to woman, by admitting her vote in elections for school trustees and in municipalities. The time is not far distant when in some communities her vote, limited by education and property, will be received on larger fields of suffrage. So great and vital a change will thus be made slowly and with careful preparation. Woman will be trained and educated for her new duty.

The final effects on society of this important reform cannot now be predicted; but as it is in the line of all the other great changes which have attended humane progress under Christianity, we may reasonably hope that the ultimate results will be equally happy for mankind.

The moral position of woman in the leading Christian

races is far advanced beyond anything known in the past. A very considerable portion of the education of the youth of the United States, for instance, is in the hands of female teachers. The public and private schools, the academies, high schools, ward and village schools are taught to a very large degree by women. Colleges for women, too, have sprung up in various States, in many of which advanced courses of instruction are pursued. The medical profession is open to a certain extent to women; and there are female physicians with large and profitable practices. But the field where women publicly are most efficient is the management of charities, especially for the young. They conduct most of the orphan asylums, "homes" for the poor, industrial schools, foundling asylums and similar charities throughout the United States. Hundreds of thousands of the poor are brought continually under their influence. The ladies of the educated classes organized, during the Civil War, the remarkable agency for helping the wounded, which worked in co-operation with the Sanitary Commission, and relieved an untold amount of misery. This association was in affiliation with hundreds of societies of relief throughout the country, and was as remarkable for its organization as its humanity.

Since the war, women have mainly founded the various important societies for inspecting public charities, and the charity organization associations which have reformed so many public abuses, and prevented and relieved so much misfortune.

Women are now being appointed for the State boards of charity, the school boards, and similar important public organizations.

Almost equally important work has been done by women in Europe, in labours of public charity, in assistance to the wounded, and in the direction of education.

In England, ladies of position have been elected to the school boards, and have been placed in public offices connected with charities. They have long been (where they represented property) members of vestries and have voted in municipalities.

In Germany, during the Franco-German War, associations of women everywhere sought to heal the terrible evils of war, and to relieve the wounded, whether among the enemy or their own countrymen.

In social and private life in the United States, woman has profound and often well-deserved influence. In her early direction of the education and religious training of the young, in her social influence and the moral power she exerts over the other sex in all classes, we begin to observe the true and legitimate effects of the faith of Jesus. In the lower classes she checks intemperance, and continually strives to raise the children to a higher range of life. In the middle classes she urges the moral side of all causes, promotes honesty in the payment of debts, supports the best movements of charity and religion, and has often a high ambition for the education and advancement of her children. In the fortunate classes, amid much frivolity and display, the sex still keeps family life pure, and leads the other in all humane efforts, and in real religious feeling. It is true that the sex has much to answer for in the United States, in stimulating extravagance and vulgar ambition. But woman still leads the nation in all the higher and more unselfish aims and labours.

And if, as often seems, a night of scepticism in America and Europe is to descend upon the most generous minds among the men, woman will still keep lighted the torch of faith, and guide the race till the morning shines again to all. Whatever position woman holds in civilized society is clearly a fruit of Christianity. Even should,

by evil chance, agnosticism at length become for a time the creed of the world, Christian traditions would long survive. But if after the lapse of ages all men and all women should live "without God and without hope" in the world, and the Christian "Good News" be as a long-forgotten, once welcome sound of Sabbath bells heard in a dream, and reverence for anything supernal have faded away, and the ties of earth be but the accidental bonds of beings soon to disappear, and the unselfish living for others an "altruism" to end in nought in a few days, then will woman become but as a weaker fellow-animal, with no especial respect encircling her, and perhaps will herself lose the purity and sanctity which made her under Christianity the object of so much reverence.

Woman, in a society to which immortality is a dream and Christ a myth, would after the course of centuries lose the ideal position which Christianity had given her. On her would especially fall the degeneracy and melancholy of the race.

We need not say, however, to those who have studied the laws of human progress, that a reaction must come to any such degeneracy, or the race must die. Faith and hope must resume their power; unselfishness must become again the highest ideal of the soul; Christianity, or some new revelation of the unseen, must shine again after ages of darkness, and as the human race advances, woman must retake the position the Faith of Jesus had given her.

Either this, or an utter degeneracy and the final ruin of mankind.

CHAPTER XXV.

DIVORCE.

HUMANE and moral progress is almost coincident with the increasing sacredness attached to the marriage-bond. That earliest of evolutionists, Lucretius, justly dates the first true refinement[1] of the human race from "chaste single marriage." We have shown to what degree the extraordinary social depravity and degradation of Roman society under the emperors were due to the looseness of this tie. In the modern world, that form of faith which has most neglected monogamy and has most clearly taught freedom of divorce, has been followed by the greatest degradation of woman. The Mohammedan countries show what social fruits a license in this matter brings forth.

We have already spoken of Christ's view of marriage, repeated and followed by the Apostles and the early Christians. The Master regarded it as one of the most holy and permanent of human relations. He evidently set a value upon it as upon no other external relation or institution. All other human connections were to be abandoned for it: God Himself had formed it, and it was only to be broken and a new relation joined for the most serious and profound reasons. The Apostles, indeed, did not always so fully

[1] Tum genus humanum primum mollescere cœpit. (*De Rer. Nat.*, lib. 5.)

appreciate it; yet they compared it to the most mysterious and earnest bond known to man—that uniting the soul to its Redeemer. All these, too, have everywhere taught that the body is the temple of the Holy Spirit, and that any connection, other than that of marriage, defiles that temple.

It is true that the Church early fell into an extreme of asceticism and celibacy. Still the distinctive teachings of Christ must be admitted to present the highest possible ideal of marriage, and the utmost sense of its sacredness. We are not, however, prepared to say that the words of Jesus are to be followed, without admitting any possible limitation or exception. In the few precepts quoted from Him, He apparently admits but one ground of divorce—unfaithfulness; and He forbids re-marriage if the partners are separated through any other cause. Paul extends the grounds to malicious desertion by an unbelieving partner, and apparently permits re-marriage; yet this permission is doubted by many commentators.

It may fairly be reasoned in so difficult and important a matter, that the Master included in unfaithfulness anything which openly and clearly perverted the ends of the relation; and that Paul, who probably knew of teachings by Him of which we have not heard, inferred even a greater latitude, where so great a separating power as difference of religious faith came in between the partners.

As we have stated before, the true inference from these early teachings is that the utmost sanctity is to be attached to marriage, and that divorce is only to be permitted from the most serious grounds, which affect the very existence of the relation.

Under the Christian teachings, men are not lightly to enter on marriage; they are to observe it loyally; it is a bond for life and death; much is to be endured for the

sake of sustaining it, even if it be not in all respects complete; perfect faithfulness and purity are demanded from man as from woman; if separation occur from light cause, the partners are not permitted to marry another; and if a final breaking of the tie take place, it must be from very profound and serious reasons, such as make the marriage no true union of body and soul. This we believe to be substantially the Christian doctrine of marriage.

But as this is the one exception in which Christ's words apply to institutions or outward acts, and not to principles, we may easily be mistaken as to the application of His teachings.

What has this moral doctrine accomplished in the world's progress? The words of the Lord were first uttered amid a community—the Jewish—where polygamy had been tolerated, and free divorce of the wife by the husband was permitted.

They were thrown as seeds into another society—the Roman—where, as we have shown, divorces were daily, and the marriage relation had reached its lowest state of degradation, and family morals were corrupt to the last degree. The struggle against free divorce, as we have indicated, was a changing one under the so-called Christian emperors of Rome, and throughout the ancient world. Even Justinian was obliged to issue a law,[1] which revoked what he had promulgated against too free divorce. Still everywhere into Roman and barbaric society was penetrating a new conception of marriage, or at least a respect and reverence for it, and an opposition to divorce, such as the ancient world had never known. The Christian conception was in harmony with the German, though the northern tribes permitted polygamy, and often indulged in too free divorce. This fresh principle of purity and respect

[1] *Nov.*, 140.

for marriage, did more than anything towards saving the barbaric tribes from the degeneracy which had overtaken the Greeks and Romans. Roman law, before Justinian, showed the effect of the new Faith, in strengthening this bond, but not by any means to the degree which might have been hoped for. Where divorce occurred on account of the guilty conduct of one of the partners, the consequences to the guilty one in a pecuniary direction were made more heavy than under the old Roman law, and occasionally re-marriage was restricted; but divorce by mutual consent, with liberty of re-marriage, was finally permitted.

The drift of influence, as the Christian doctrines came more and more into power in the Middle Ages, was in favour of the permanence of marriage. Yet this was modified by non-Christian views which also imbued society under the influence of the Church. Celibacy became too highly honoured, and marriage was looked upon as a species of impurity. A vast deal of concealed vice and concubinage existed, especially among the clergy—a natural reaction against these extreme views. The clergy, who were generally unmarried, had the framing of the canon-law on marriage, and in consequence made it the expression of the extreme ascetic doctrine. Under their influence marriage became a sacrament, and for scarcely any cause could be broken; while the position of the woman was inferior in this relation to what it had been under the purely Christian view. The general churchly view of divorce in the Middle Ages is thus concisely stated by Pres. Woolsey in his excellent essay:[1] (1) That no crime of either partner, being Christian, justified re-marriage to another during the life of the offender. (2) If an

[1] *Essay on Divorce.* This valuable little book is the clearest and most able monogram on divorce, in modern writing.

infidel partner deserted a Christian the latter could re-marry. (3) Consorts separated by criminal conduct could unite with each other again, but the guilty one must do penance.

There were conflicting views in regard to the right of re-marriage after separation for criminal conduct; but on the whole, the prevailing belief was that this should be only a separation, not a divorce.

These extreme views, going far beyond the Christian doctrine, first discouraging marriage, then making marriage a very heavy burden which could never be removed, produced naturally a great reaction. The Protestant Reformers expressed in their lives and doctrines this reaction. They were, as might be expected, indignant at the fearful amount of corruption and vice, natural and unnatural, which had grown up under the extreme Roman Catholic ideas. They saw that the worst offence against the marriage-bond was looked upon with indifference or excuse; and that where this crime separated the partners, it did not relieve the innocent one;[1] she, perhaps, being compelled to a life of solitude and penury, while her guilty partner continued his round of wicked pleasures, or lived in open concubinage; or, if of weak nature, she was left to temptations which she could with difficulty resist. The Protestant Reformers were accordingly in favour of freer divorce. There was a difference of view among the Churches, some few holding that the bond could only be broken by death or criminal conduct, but the majority extending the causes of divorce to malicious desertion, and some permitting even cruel treatment or the opinion of the judge to determine a lawful breaking of the tie.[2]

The modern tendency of opinion in Europe, partly as a re-action against excessive strictness, is unquestionably

[1] *Woolsey.* [2] *Ibid.*

towards freer separation. France has passed through the period of revolutionary ideas, and under the famous Code Civil has permitted great laxity in this matter, but with the fall of the first Empire, she returned to the old ecclesiastical legislation on marriage; yet this stage of opinion will probably not endure long, and legislation will be obtained for more ready divorce. Much freedom of divorce is given by the Prussian Code, yet certain obstacles are thrown in the way of separation from mere caprice; and in case of criminal conduct, provision is made to compel the guilty partner to make compensation for the benefit of the children of the innocent partner.[1]

The Austrian Code is very lax in its restrictions on divorce towards non-Catholics, though retaining the ecclesiastical laws for Catholics. In Switzerland there is also very considerable freedom of divorce. In England the legislation is much stricter than in other Protestant countries. Separation from "bed and board" is permitted for injuries and cruel treatment, for desertion during two years, or for criminal conduct. Divorce is allowed for the adultery of the wife, and for "incestuous adultery," or bigamy, with other similar offences of the husband. Both parties can remarry at once after divorce; and the guilty member be united with the partner in crime. The courts are permitted to settle the guilty wife's property on the husband and children.

United States Law.—The views expressed by courts and jurists in the United States in regard to marriage, bear evidently the stamp of the Christian doctrine, but it cannot be said that American legislation has been at all in harmony with it. Thus Chief Justice Robertson [2] says,

[1] *Woolsey*, p. 147.
[2] *Logan* v. *Logan.* Quoted by *Cord*, sect. 936.

"Marriage being more fundamental and important than any of the social relations, is controlled as to its obligation by a peculiar policy, deemed essential to the welfare of the whole community. Being a contract for life, indissoluble by the consent of the parties merely, it should not be dissolved by the sovereign will for any other causes than such as are subversive of its essential ends, or inconsistent with the general welfare. And it is certainly important to the general stability and harmony of that relation, that the parties should know that having taken each other with all their infirmities and vowed reciprocal fidelity and forbearance for life, it is their interest as well as their duty to bear and forbear, as far as the resources of love, philosophy and religion can enable them."

And again,

"The institution of marriage, commencing with the race and attending man in all periods, and in all countries, has ever been considered the particular glory of the social system. It has shone forth in dark countries and in dark periods of the world, a bright luminary on his horizon. And but for this institution, all that is valuable, all that is virtuous, all that is desirable in human existence, would long since have faded away in the general retrogression of the race, and in the perilous darkness in which its joys and its hopes would have been wrecked together.[1]

A careful writer on the "Domestic Relations," Schouler, says,

"When parties united in the solemn responsibility of marriage, can coolly discuss and arrange the preliminaries of final dissolution, and haste to obtain judicial relief for the purpose of forming a new union, as is sometimes done in our land, they are hardly fitted to discharge nature's highest obligations to one another; certainly they cannot do justice to their children nor to society. Thus may marriage lose half its significance by parting with all its sanctity."[2]

Judge Story says,

"It (marriage) appears to me sometimes more than a mere contract. It is rather to be deemed an institution of society, founded upon the

[1] Bishop. *On Divorce*, p. 13.
[2] Schouler. *On the Domestic Relations*, p. 302.

consent and contract of the parties, and in this view it has some peculiarities in its nature, character, operation, and extent of obligation, different from what belongs to ordinary contracts."[1]

In a work of this nature, it is not necessary to give a detailed sketch of the legislation on divorce in the different American States. In what we have to say, we follow mainly Prest. Woolsey's admirably clear resumé. The State where the marriage law was most strict before the civil war, was South Carolina, in which it is stated that no case of divorce ever came before the courts, and no divorce was ever granted by the legislature, nor was ever even a legal separation granted by law. In New York State, the law greatly resembles the English legislation: divorce is permitted for adultery, and separation for specific acts, the great differences being that if one of the partners is found guilty of adultery, a re-marriage is not permitted during the lifetime of the innocent member, and that husband and wife are put on precisely the same footing as to criminal conduct as a ground of divorce.

The majority of the States, however, permit divorce for a great variety of causes, and present a looseness of procedure which has increased the facility for a legal separation on trivial grounds to an alarming extent. In most of the States, adultery, malicious desertion under various conditions, imprisonment for crime, neglect to provide for a wife's maintenance, cruelty and habitual drunkenness, are held as grounds of divorce, and in a few the membership of a religious society which regards marriage to be unlawful. But beyond these, in certain States [2] divorce is left to the discretion of the court; and

[1] *Confl. of Laws*, 108.
[2] Maine, North Carolina, Iowa, Rhode Island and Connecticut, (*Woolsey*, pp. 204, 205.)

in Connecticut a statute allows divorce for "any such misconduct as permanently destroys the happiness of the petitioner, and defeats the purpose of the conjugal relation." This particular clause in the statute was repealed in 1878, with very good results in the following year, there being 316 divorces against 401 of the previous year. The effects, however, since that date have not been remarkable.

It is in the above State, and Indiana, that divorce laws have been most loose. A year's residence in the latter qualified a person to petition for divorce; the case could be tried thirty days after notices had been published in a newspaper of the county; the defendant was often ignorant of the proceedings, and both parties were freed by the divorce from the marriage contract.

The liberty of re-marriage varies exceedingly in the different States, the greater number however putting no restriction on the union of divorced persons.

The result of this license of divorce in the average number of divorces to the marriages is an instructive fact. Thus from 1860 to 1867, in Vermont, out of 15,710 marriages there were 730 divorces, or 1 to 21·5; in Massachusetts, from 1861 to 1866, 1 to 44·4; in Ohio, from 1865 to 1866, 1 to 26; and in Connecticut, from 1860 to 1867, 1 to 11·40; and in 1864, there was one divorce in that State to nearly every ten marriages.[1] We have not the figures for Indiana. In Prussia, the ratio for non-Catholics in 1855 was 1 to 29; in Belgium in 1874, 1 to 272; in France, from 1871 to 1874, 1 to 152.[2]

It will be seen from this brief sketch, that the Christian doctrine of divorce, as we understand it, has seldom in the world's history been accepted in its pure form. Christi-

[1] *Woolsey*, pp. 221, 222.
Naquet, *Le Divorce.*

anity has strengthened marriage in every age. But on one side, has been too much asceticism, or too much strictness with the marriage-tie, and on the other, too much looseness of the bond.

The present drift is the opposite to that of the Middle Ages, and towards an excessive license in divorce. There can be little question that the extreme difficulties thrown about separation, such as the English law presents, or such as have been offered in South Carolina, have been unwholesome. They bring about great hardships and injustices in the marriage relation, and tempt to concubinage. The latter is said to have been very common in South Carolina under the old law[1] English society among the higher classes is reported as much more contaminated with this relation than is American society under freer divorce laws. Catholic countries under the strict canon law do not present certainly nearly so happy a condition in regard to marriage, as do Protestant countries, where much latitude is allowed.

On the other hand, the conviction is growing among the most thoughtful persons in the United States, that if a license in divorce increases, such as has been allowed in a few of the States, the utmost peril threatens the most important interests of society. There is danger of marriage losing all its sacredness; of its being taken up and dropped like concubinage, and the children of these unhappy connections floating about, uncared for, on the currents of society. There is nothing as yet in American society of the old Roman license of morals in regard to marriage and divorce, and there could not be where Christianity had the faintest influence; but there are dangers ominous for this relation which are arousing general anxiety. Public opinion in such States as Indiana and Connecticut,

[1] See Bishop, *On Divorce.*

is strongly running towards greater strictness, and some changes in legislation have been made in this direction.

Perhaps the most striking modern instance of the effect of utter freedom of divorce, and liberty of re-marriage, is given in the habits and life of the foreign poor in a city like New York. Here the Irish or German peasant, being removed from the restraints of home and priesthood, applies to his "civil contract" a freedom of action which he would not use in any other contract. As the wife grows older and less attractive, she is thrown aside for some more pleasing companion; the husband migrates to distant parts of the country and disappears, and the unhappy woman and children are left on the world to struggle as they best may. Or again, the wife abandons the husband, and he is compelled to leave the children in neglect; or marrying again, to place them under that relation, often so cruel among the poor, of the step-mother. It is not strange that one of the prolific causes of the extraordinary crime and misery among children in New York is the looseness of the marriage tie.[1]

Of course, in a more cultivated class, many causes will soften the effects of free divorce. But in the long course of years, the influence upon family life and the future of children, of weakening the marriage bond, even among persons of education, will be parallel to what we see of its effects on the poor in American cities. When among modern races marriage is even less than a civil contract, to be broken not merely by "mutual consent," but by the whim or fancy of either party, when it can be assumed and abandoned as easily as any relation of feeling or imagination, then will the sacredness have departed from many of our homes. Human selfishness and passion

[1] See *The Dangerous Classes of New York*, p. 41. By the Author.

will take the place of duty. Children will be left to uncertain guidance; the greatest security in modern life undermined, and one of our purest wells of happiness defiled. When this shall have occurred in the modern world a physical degeneracy will commence which will be contemporaneous with the moral, and such races will lose power and virtue, until, as in the Roman empire, more vigorous peoples take their places.

It is true that under a theory of free divorce a very happy marriage in favourable circumstances may occur. But so a happy concubinage is sometimes known. The question is, How will society generally tend if there is unlimited license of separation and re-marriage? Human selfishness and masculine caprice and passion seem best cured by throwing a peculiar sacredness and earnestness about marriage, so that it be not lightly entered upon, and be loyally carried through. The home must be made secure and stable; children must not be left to uncertain care; and each partner must feel constrained to govern fancy or selfishness with a view to the loyalty of the relation.

Notwithstanding the facts we have mentioned, on the whole, especially in the Middle States, it may be said that the marriage condition is happier and more often founded on affection, and that concubinage is less known there than anywhere else in the civilized world. Woman nearly occupies, in America, the position which Christianity seems to assign her—of the moral leader and inspirer of society and the equal of man in personal rights, with the liberty of nearly all possible development of her capacities.

In a State like New York the strictness of the English law is tempered by the freedom easily enjoyed by dissatisfied partners in other States. Marriage, among the

intelligent classes, is highly reverenced, and not easily broken. Only grave causes are usually held in society to justify divorce, and yet there is no absolute yoke in the relation. The conscious freedom enjoyed, and the sacredness attached to the bond, have combined under New York law to make marriages unusually stable and often peculiarly happy. There is still too much license of divorce, owing to the legislation of other States; and the partner who has separated for trivial causes often takes the liberty of re-marriage to another too readily. The Christian ideal (if we understand it correctly) is not yet reached; yet it is approached.

As society everywhere advances in morality and refinement and intelligence, it will more and more draw near the model which Christ and His apostles have sketched of marriage, to the *casta connubia* of which Lucretius speaks. Equal chastity will be expected from man and woman; the body will be as "the temple of God"; two natures will tend to be one in a relation formed by the Creator and esteemed beyond all other relations,—a bond only to be broken for extreme causes, so sacred that, if dissolved for light reasons, it is still in conscience held binding.

Legislation, as it advances, will tend in this direction to solidify and firmly establish marriage, to make quick divorces difficult, to throw the burden and penalty of the violation of the bond on the guilty one, to protect the children, and to give the dissatisfied or disagreeing partners time and opportunity for reconciliation; and yet it will not force an unfortunate woman or man, bound to a brutal or unfaithful partner, for ever to be in bondage to a relation which has no foundation of affection or respect. The laws of the future, like the Christian doctrine of marriage, will draw a *via media* between the strictness of the Catholic canon-law

and the license of Protestant practice and law in regard to marriage and divorce.

In regard to concubinage, Christianity works everywhere to extirpate it. It has continually tended through all modern history to do away with illicit connections between the sexes. In this matter the Church, at certain periods of its history, has been fearfully inconsistent with the teachings of the Master. At present, however, it leads the morality of the world on this subject. To the Faith preached in Galilee, Roman law owed its first tinge of humanity in regard to the children of these unfortunate connections. As we have shown in an earlier chapter, Constantine, under the influence of the new ideas in the world, legitimated illegitimate children *per subsequens matrimonium*, by a subsequent marriage, his object being, as the code states, to break up this permitted habit of semi-matrimony.[1] Justinian continued and confirmed this humane legislation; and, under the Popes, it was preserved by two rescripts of Pope Alexander, in the Decretals[2] of Gregory (1172 A.D. and 1180). This legislation was imitated in Scotland and in most of Central Europe. Similar provisions protecting the unhappy children of unlawful connections, have been engrafted in the legislation of most of the States of the American Union, and in some States even a formal declaration of the father,[3] affirming a subsequent marriage, is sufficient to legitimate the children, if it be filed in court and recorded.

Humane progress in the matter of divorce and concubinage has been more influenced by the teachings of Galilee than by any other one cause in history. Yet it is evident that civilized society has not at all in general

[1] Licita consuetudo semi-matrimonii. (*Cod.* Lib. 6, tit. 57.)
[2] *Dec.*, iv. 17, 1.
[3] *Schouler.*

reached the ideal of purity and of marriage presented by the great Teacher. As mankind becomes better and happier it continually approaches that ideal; and the perfection of humanity will be almost attained when the Christian conception of marriage is realized by man and by woman.

CHAPTER XXVI.

DEGRADATION OF WOMAN.

IT would seem at first thought that one terrible social evil existed which Christianity had not only not mitigated, but scarcely even touched—the prostitution of women. The class of human beings who live by selling that which is above all price is still the most hopeless and irredeemable under modern civilization. Christ Himself had evidently felt a profound compassion for these unfortunate and guilty persons; and this example in all ages has led His followers to special efforts to improve and save these victims of their own folly and poverty and man's passions. But as society has become more and more permeated with the Christian sentiment and sense of obligation of purity, these persons, who persistently and openly violated it, have become more and more sunken by contrast. Their own sense of degradation is the measure of the prevailing standard of society. When the Greek wives and maidens were as they were in the time of Socrates, the *hetairae* might well be the leaders of society. And when Roman married life had reached the low stage of the period of the early empire, legislation to prevent high-born matrons from becoming prostitutes would be natural.[1] One of the safeguards of modern society is in the perhaps exaggerated sentiment of contempt and condemnation against those who

[1] *Tacitus* (Ann. 2. 83).

are lewd for hire. But this protection around the virtuous seems to still more shut out the vicious from the sacred circle of purity. Society generally is purified, marriage is more sacred, woman is in a higher position of respect and influence, but the class of female offenders against sexual virtue is even lower than in antiquity.

But even with this class some great steps in advance have been made. There are no longer those, except in non-Christian lands, who sacrifice virtue and purity as an offering to base ideals of superstition, and become prostitutes at the shrine of a deity. There are no longer large classes of persons, like those under the Roman Empire, who as slaves held their virtue at the will of another, or were compelled as libidinous actors to live for the lusts of men. Neither religion nor law nor social custom compels the "lost women" to remain as they are. They have no unchangeable profession any further than their own weakness of will fixes it. They are the victims of their own idleness or folly or bad habits.

On the other hand, all the best influences of society are seeking to reclaim them and to diminish this source of so many calamities. Christianity has, as it were, only begun its century-long struggle with this tremendous social evil. If the student reads carefully Plato's Laws,[1] he will find there a curious passage, already partially quoted in this work, where the philosopher of love regards the terrible unnatural lusts of men in Greece at that day with somewhat of the hopelessness that a fervent Christian philosopher of this century might feel in regard to this vice among women.

Plato believes that certain great moral forces or ideals will, in a far distant future, purify society of these morbid passions; but to him this result is as far away as, for

[1] *Nomoi*, ix.

instance, universal peace is now to the Christian. The modern student has seen society almost cleansed of these impurities, under the influence of the new ideal before the world. So, after many ages, it will be under Christianity with woman's vice and impurity.

The first great step has been made under the new Faith. Woman's fall could not happen without man's temptation. The duty of masculine purity (though only partially recognized by Christians) is most clearly taught by Christ. As we have said before, He was not alone in preaching this doctrine. The stoical moralists had taught it. But in every form He and His apostles seek to impress this obligation on the human conscience. A certain number of His followers in every age are so inspired by His spirit, that they endeavour "to become pure even as He is pure." This number will continually increase, and their opinion and practice will more and more influence society. As man becomes pure one great source of temptation will be diminished to women who are idle or frivolous or desperate. When the conviction spreads through every community, that in this offence, man sins with the woman; and, though the moral evil be not to him as to her, yet that he, as she, holds a temple sacred to the Holy Spirit, and equally with her has soiled and profaned it; and that he, as she, has separated himself from his ideal and Lord, and must answer in his own soul, not only for the injury he has brought upon himself, but for that ruin he has aided to bring upon another,—then will an enormous dyke as it were be formed against the spread of prostitution.

Another great power restraining its increase will be the Christian and moral influences which are now thrown more and more around the childhood of the working and poorer classes. Public women of this kind are not generally, as is supposed, the victims of deception and wrong

by men. They are usually poor girls who have grown up without good influences, and not in habits of regular work or industry; they fall early into ways of idleness, among bad company, and are ready to earn pleasures and luxuries by unnatural means. It is this great class of untaught and neglected poor children who mainly supply the class of prostitutes. Of course there are other elements, but these form the immense majority. Now to this class, Christianity, under modern methods, offers at once its peculiar influences. It holds before these children a sublime ideal of purity; it teaches each one her immense value in the universe; it trains the little ones to habits of industry and daily work; it inculcates purity of person and heart, and prepares each character for the tough struggle of life, and takes the child almost out of the class of persons who are exposed to this great vice.

A remarkable instance is given of the effect of such influences on many thousands of very poor children, during a space of twenty-five years, in the charitable work of an association—the Children's Aid Society in New York.[1] From the careful reports of this charity, it appears that but very few children among the many thousands who go forth from the industrial schools of this society, ever fall into criminal courses, but become honest and industrious working women.

Now it is quite conceivable that such influences could be vastly extended, and everywhere the children of the poor brought under this moral discipline and training, so that one great source of this evil should be much dried up.

Then, as Christianity prevails in the world, marriage will be held in higher and higher esteem, and all irregular connections be discouraged, and legislation which interferes with early marriage be discountenanced. Moreover, the morality of the Gospel works against selfish display, luxury and extravagance, which now under modern habits so much prevent marriage. Where self-control, sobriety and economy are the rule, there early and natural connections between the sexes will be more the custom. To the young man, next to religion, the strongest safeguard against vice is a chivalric ideal of woman, and certainly the influence of this faith has always been to give her this exalted position.

[1] See *Dangerous Classes of New York*, by the Author.

The specific Christian influences will be more and more to exalt marriage, to make it the perfect example of all human relations, to lead the young to sacrifice self-indulgence for it, and above all, to present an ideal of purity, for both man and woman, in the life and teachings of the great Founder of the Faith, which will raise both sexes above the reach of unlawful passions or unnatural indulgences. This will not be as in the past an ideal of an unnatural and impossible asceticism, but simply of purity and self-control. It is entirely possible that all society may become as a few, inspired with this religion, are now. We cannot say that Christianity has as yet made any vast change in regard to this vice. But we can say that it has begun changes. We can see that it has purified society, that it is redeeming many thousands of youth from this evil, and that it has implanted a power of resistance and a sense of purity almost unknown before. We see clearly that it only needs time to perfect its workings and to greatly diminish if not extirpate, one of the monster evils of humanity

CHAPTER XXVII.

INTERNATIONAL LAW.—ARBITRATION.

THERE is evidently one field in which the great moral forces of history have had little effect, and where Christianity itself at first sight seems a failure; we mean the public relations between nations. War still remains the most fearful curse upon mankind; it still desolates thousands of homes, making innumerable orphans and widows, destroying in a day the results of long and patient labour, and laying up in taxation and the support of armies immense burdens upon the labouring classes. Nations are in the same relations to one another in regard to questions of right or property in which the barons of the fourteenth century were to each other. As then a dispute throughout Europe upon the title to real estate was settled by duel, and as private gentlemen and individual cities in any difference with their neighbours resorted at once to "private war," declared under due formalities, so now between peoples, disputes in regard to territory or on questions of right and honour are supposed to have but one court of decision—the arbitrament of armies. Leaving out of view the wars where great principles are involved, like the war for the independence of Hungary, the Franco-Austrian struggle for the freedom of Italy, the American Civil War and others, there are still numerous either useless or unjust contests, such as those of the United States

with the Indian tribes, of Great Britain with inferior races like the Chinese, Zulus, and Afghans, sufficient to show that Christianity has barely touched international relations among the most highly civilized communities. It is estimated by De Card that recent wars alone in Europe have cost the people fifty milliards (50,000,000,000) of francs. The present peace establishment of Europe embraces over 2,000,000 men, with a liability of 4,000,000 more to be called out, and a constant expense to the people of £600,000,000 per annum. Every country of Continental Europe is eaten up by the taxation necessary on account of the hostile position of peoples who have substantially the same interests.

To the Christian Church, international law, or the customs and rules of conduct between nations, owes little; but to the moral and religious principles with which Christianity has been slowly impregnating mankind, it has a deep obligation and will be more and more indebted.

It must be remembered that international law, as a body, is a creation of the times since Christianity was a living force in public affairs. It is true that many of its rules and principles are derived from the Roman law, but the modern spirit which has especially characterized it since Grotius will be seen to be essentially influenced by the new Faith.

Among ancient peoples, the Greeks appear to have had no body of international law which they recognised as binding them to other nations. The stranger to them was an enemy and a "barbarian." There were indeed customs often acknowledged between their own different tribes and States which rested on principles of justice and humanity. But even among themselves such actions were permitted, as the slaughter of prisoners in cold blood, the execution of generals after misfortune in

war, the infliction of perpetual slavery on captives, the absolute annihilation of hostile cities, the violation of women and murder of children after victory, the useless punishment of hostages and violence to ambassadors, and bloody personal revenge on enemies,[1] and similar barbarisms.

The Romans possessed the germs of international law in their "Fecial rules" (*jura fecialia*) or religious customs, recognized by the various Italian states in their early history, in regard to declaring war and other duties between States. It was something that a band of priests could restrain warriors and that war could not be made without legal forms. The Roman *Jus Gentium* arose later, and was not the law of nations in the modern sense, nor does it appear that the Romans believed in a code or collection of customs and laws between nations which would, for instance, restrain Rome itself if it were not Roman law. No members of a foreign and independent nation not in alliance with Rome had any rights which the Roman tribunals could enforce. Even Justinian's code, in a well known passage,[2] asserted that a people not in alliance with Rome could keep what it could take from the Romans, and that the latter had an equal right towards the other. In other words, the natural relation of nations to one another was that of hostility.

The *Jus Gentium* was gradually extracted from the codes and customs of the several provinces and from the Roman law, being the common element in both, or that part which rested on principles of equity or fairness. It was naturally a more liberal code than the civil law, and finally entered into and partly absorbed Roman law itself. As Cicero

[1] Ward, *Laws of Nations*, vol. i. p. 178.
[2] *Dig.*, Lib. xlix. 15, 3.

says, "the civil law was not always the law of nations, but the law of nations must always be the civil law."[1]

The Stoical jurists, and after them the codifiers of Justinian's code, assumed that this common element in the law of nations was the *jus naturale*, or natural law, so that the definition of the law of nations by Gaius' and Justinian's code would not be a bad statement now. "What natural reason has determined among all men, that among all is constituted and called the law of nations."[2] But in practice the Romans scarcely recognised any law of nations binding great and weak powers, Rome and the barbarians. There is but little trace in their writings or public action of a belief in a code of rules and customs obligatory on the mutual conduct of Rome and independent nations.

"Against a public enemy there is always authority,"[3] was an ancient maxim. "Whatever I have done in regard to enemies of the State, the law of war defends,"[4] is an axiom of the Roman general, according to Livy. Cicero,[5] indeed, in a very eloquent passage describes a universal law, for all times and nations, one and eternal, governing all; but his grand rhetoric did not picture anything which existed, or was likely to exist, in the Roman world.

Ward (*Laws of Nations*) says very justly that the theory of the classic nations in regard to international relations

[1] . . . quod civile, non idem continuo gentium; quod autem gentium idem civile esse debet. (*De Offic.*, 3, 17.)
[2] Quod vero naturalis ratio inter omnes homines constituit, id apud omnes peraeque custoditur, vocaturque Jus gentium, quasi quo jure omnes gentus utuntur. (*Just.*, lib. 1, tit. 2. *Gaius*, lib. 2, tit. 10.)
[3] Adversus hostem, æterna auctoritas. (*Tab. Duod.*, and *Cic. de Offic.*)
[4] Quidquid in hostibus feci, jus belli defendit. (*Liv.*, xxvi. 30.)
[5] Neque erit alia lex Romae, alia Athenis, alia nunc, alia post hac; sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis, etc. (*De Rep.*, l. iii. c. 22.)

was, that men were bound to no duties to one another without some express contract, Foreigners could anywhere be seized, imprisoned, enslaved or killed, without any breach of human or Divine laws.

Even Justinian's code seems to allow that a prisoner of war may rightly be made a slave.[1]

In the Middle Ages, from the fall of the Roman empire to the eleventh century, there may be said to have been no international law, or only a confusion of customs, some of which had been influenced by principles of equity, while others rested on barbarism. The Italian States, which were especially under the influence of commerce, in the twelfth century, were among the first to frame treaties in regard to the liberty of the seas and the right of prize in the time of peace. The early commercial codes of the north of Europe, in the Mediterranean, and of Europeans in the East, contained many features of modern international law. Piracy, however, was still allowed in the time of war. The first check to "private war" on the sea was made by privateering, near the beginning of the eleventh century, as we shall hereafter detail.

One of the first appeals of one nation to the others, as if they formed one commonwealth, was in the twelfth century; and in the thirteenth century we find the good king, St. Louis of France, chosen arbitrator between Henry III. of England and his barons. In 1356 Edward III. made an appeal to "all Christendom" against John of France, as if a certain bond united all European peoples. Yet so little progress had international right made, that in the reign of St. Louis, we are told by his biographer that if two kings were at war and one of them died, the ambassadors who were sent reciprocally remained prisoners and

[1] Et liber homo noster ab eis captus, servus fit et eorum. (*Dig.* lib. xlix. tit. 15, 3.)

slaves.[1] The barbarities of the Middle Ages in warfare were equal to those of the worst of the Roman times. The Normans are said by historians to have put their prisoners to death under terrible tortures; some were suspended over slow fires and hung by their feet or thumbs; some had their brains crushed by tight ligatures; some were thrown into dungeons with serpents. Female prisoners were exposed to the most brutal treatment. The Scotch, in their invasion of England under David I., murdered the sick and the aged in their beds, infants on the breasts of the mother, and priests at the altar. The Italians in their invasion of Sicily at the close of the twelfth century were equally cruel, burying prisoners alive, burning priests and throwing them into the sea. Of the many wars between the French and English, an old author describing their effects says, "Churches are despoiled; men everywhere murthered or wounded, others put to death or tortured; matrons ravished; maydes forcibly drawn out of their parent's arms to be deflowered; towns daily taken, daily spoiled, daily defaced; the riches of the inhabitants carried whither the conquerors thinke good; houses and villages round about set on fire; no kind of cruelty is left unpractised."[2]

Nor were wanting in the Middle Ages prominent individual instances of similar barbarism. The natural son of Frederick II. in 1264, in his war with the Pope, punished with mutilation and death all priests taken prisoners. Prisoners were not uncommonly either mutilated or killed. The old Roman custom or law,[3] that an enemy who had

[1] Suivant la coutume alors usitée en Payennie comme en Chretienté que quand deux Princes estaient en guerre, si l'un d'eux venoit à mourir, les Ambassadeurs qui s'estoient envoyés reciproquement, demeuroient prisonniers et esclaves. (*Joinville, Vie de St. Louis.*)

[2] Quoted by Ward, in *Laws of Nations.*

[3] Verum in pace qui pervenerunt ad alteros, si bellum subito exar-

come to another country, even in time of peace, could, if war broke out, be enslaved, existed in Europe in the Middle Ages; and the enslavement of prisoners did not cease till the middle of the seventeenth century; the treaties in that century generally stipulating that prisoners should not be sent by their captors to the galleys.

Among the individual instances of cruelty, it is related by the chroniclers that Rufus, son of William the Conqueror, cut off the hands and feet of the Welsh prisoners taken by him. The Emperor Barbarossa is said to have delivered all the prisoners taken in Milan to the executioner or to have shot them off from military engines. These instances of cruelty in that age could be multiplied without limit. Poisoned weapons and missiles were used even as late as the fifteenth century. In the same century it was a public custom to hang prisoners taken in a siege; and it appears to have been a recognised law of war that a relieving force, entering a fortified place after the siege was commenced, was liable to the severest punishments.

Officers who had fought gallantly and were beaten in the open field, were often, after capture, executed by the victor. Ambassadors were frequently killed on their missions of peace. In fact, it may be said that from the time of Cæsar till the fifteenth century there was very little progress in the laws of war. Christianity had not so touched the peoples of Europe as even to soften superficially the barbarism of ancient times.

The only redeeming features were an indirect result of Christianity—the compassion and courtesy introduced by chivalry and the ransoming of prisoners among the knights. But these were humanities which were ex-

sisset, eorum servi efficiuntur, apud quos jam hostes suo facto deprehenduntnr. (*Dig.*, xlix. 15, 12.)

ercised only among a class. They did not reach the common soldier, or benefit the peasant and labourer. Fearful acts of atrocity against peasants and citizens by the kings and generals of the Middle Ages are often reported.

The first great change was in the treatment of prisoners. Suarez, in the sixteenth century, states that the old custom of the Roman law of nations, of making slaves of prisoners, had been changed in the Church, and was no longer observed among Christians.[1] An old English historian, Sir Thomas Smith (1570 A.D.) thus states the reform:—"Howbeit since our Realme hath received the Christian religion, which maketh us all brethren in Christ, *conservos* (fellow-servants), men beganne to have conscience to hold in captivitie and such extra-bondage, him whom they must acknowledge to be their brother; that is, who looketh in Christ and by Christ to have equal portion with them in the gospel and salvation."[2]

Ayala writing in the sixteenth century says, that in the wars of Christians, the enslavement of prisoners is not permitted, nor perpetual imprisonment, and that all such wars are only civil wars, because all are "brethren in Christ."[3]

It was not, however, till the treaty of Münster (1648) that it became the general custom of European nations to release all prisoners at the end of the war, without ransom. This important step in humane progress, it should be

[1] Sic enim Jus Gentium de servitute captivorum in bello justo, in Ecclesia mutatum est, et inter Christianos, id non servatur. (*De legibus. Suarez.*) *Ward*, vol. ii. p. 27.

[2] *Commonwealth of England*, previously cited.

[3] Et in prima receptum est ut in bellis Christianorum servitus non sit. Haec enim bella non plus quam civilia sint quia omnes in Christi fratres, etc. (Lib. iii.-ix., *De Jure et Bellicis officiis*, 1597.) See also p. 54, *ibid.*, and *Alberici Gentilis, De Jure Belli*, Oxford, 1877.

noted, is coincident with the revival of pure Christianity in England and many portions of the Continent. Previous to this treaty, in 1630 we find a distinct allusion to the slavery of prisoners of war in the treaty of Madrid between Spain and England (Art xxviii.). "Prisoners taken in war on both sides, although condemned to the galleys, shall be set at liberty and dismissed upon payment of their expenses by those who are not in the galleys, and upon payment of their ransom by those who had formerly agreed to it."

Many of the non-Christian nations held that no faith was to be kept with those not of their own belief. Even the Koran taught this.[1] The Mohammedan powers in the north of Africa enslaved all shipwrecked persons and prisoners, and tortured their captives. Only direct treaties with European powers[2] secured the abolition of these barbarities.

The Turks in the sixteenth century treated even ambassadors with inhumanity, though European customs had become gradually humane towards these officials, and resident ambassadors were permitted to dwell with safety in the country of a rival or enemy. The Spaniards imitated the Turks in putting prisoners to death or sending them to the galleys; even in the declaration that no faith was to be kept with heretics.

It was not till 1828, that Turkey and Persia agreed to exchange prisoners according to the custom of Christian nations.[3]

One of the earliest expositions of international duties was made about 1506 A.D. by Prior Honoré Bonnor, in a

[1] *Hedaya*, ix. 3.
[2] Treaty with Algiers in 1686, and with Tripoli and Tunis. *Ward*, vol ii. p. 331.
[3] Manning's *Laws of Nations*, p. 162.

work called "L'arbre des Batailles."[1] This writer shows strongly the influence of his professed faith, in his recommendations: he teaches that battles should be avoided on holy days; that those dying in unjust wars do not go to heaven, and claims the exemption of Churchmen, pilgrims, the sick and infirm from the duties and evils of war. He even permits the students of belligerent powers to visit the universities of one another during the struggle.

The early writers on international law seem to have been in advance of the practice of the Church in respect to wars with non-Christian nations. The author quoted above says: "By what right can we make war against Sarassins or other infidels? I will prove that we cannot do it lawfully for their being infidels . . . Moreover we should not and cannot, according to the Holy Scriptures, oblige infidels to embrace the holy faith and baptism, but must leave them with the free will which God has given them."[2] Ayala makes a similar humane protest (lib. 1–28).

A striking instance of the influence of Christianity in the barbarous period of Europe, is contained in Alcuin's letter to Charlemagne, wherein he reminds him to show mercy to prisoners, even as God will show mercy to him.[3]

Grotius.—The great reforms in modern international law, due especially to the spirit of Christianity, began in great part with the eminent Dutch publicist, Grotius, early in the seventeenth century. He thus states the motives which prompted him to his great work:

"For I saw, prevailing through the Christian world, a license in

[1] *L'arbre des Batailles*, 1506, Lyon.
[2] *Ibid.*, quoted by Digby, 3,153 (*Mor. Cath.*).
[3] Memor sit pietas vestra captivorum, etc. (*Al. Ep.* 90).

making war, of which even barbarians would have been ashamed; recourse being had to arms for slight reason or no reason, and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crime without restraint." [1]

The Law of Nature, on which, as is well known, he especially bases his Law of Nations, he ascribes to God, and speaks of express laws of God as "restraining passion," and touches the key-note of modern humane progress in these words:

"The Sacred History doth not a little provoke us to mutual love by teaching that we are all of us born of the same first parents." [2]

The reforms of the laws of war in modern times have been especially in the direction of limiting, so far as possible, its evil effects to the combatants, of allowing no damage which did not conduce to the purpose of the war, and of abolishing the dictum of barbarism, that if two nations are at war, all the citizens of each must be also enemies. The last principle still lingers in the writings of many publicists, but Grotius was too much imbued with the Religion of Love to be willing to recognise it. Of war, some of his opinions are still worth quoting and remembering.

"We Christians are especially taught to expose our own lives to the greatest perils that can be, to preserve the lives and procure the everlasting welfare of others, in imitation of our great Lord and Master. . . . How much more reason have we to forbear the prosecution of our just rights when they cannot be obtained without the effusion of so much blood, and the destruction of so many men's lives and estates, besides other mischiefs which war usually brings with it." "When we consider that by the Hebrew Law, he who had slain a man even

[1] *De Jure Belli, etc.*, Hugo Grotius (preliminary statement). Evart's trans. 1782.

[2] Preface.

without intending it, was obliged to fly; that God forbade His temple to be built by David, who is related to have carried on private wars, because he had shed much blood; that even among the ancient Greeks, those who had stained their hands with manslaughter, even without fault, had need of expiation, how can any one fail to see, especially among Christians, what an unhappy and disastrous thing and how strenuously to be avoided, is a war, even when not unjust" (p. 283).

"Good faith," which was at that day so generally violated in the relations of nations, is thus urged, on both secular and religious grounds:

"And, therefore, it is especially the office of kings to cherish good faith, first for the sake of conscience, and then for the sake of good opinion, by which the authority of kingdoms stands. Let them be certain, therefore, that they who instil into them acts of deceit, are themselves the deceivers they would make them. Doctrines cannot long work well which make men unfit for society with man, and we may add, hateful to God" (c. 25, t. 11).

His views of privateering have anticipated the reforms of this century, and are evidently guided by the Christian theory of life.

"But even if justice, strictly speaking, be not violated, there may be an offence against loving our neighbour, especially in a Christian aspect, as if it appears that such privateering will not hurt the general body of the enemy, or their king, or the guilty portion of them, but the innocent; and it will inflict upon them calamities which it would be cruel to inflict even on those who are personally indebted to us. And if besides this, such a privateering is not likely to conduce either to the termination of the war, or to any notable damage of the enemy's public power, then it must be considered unworthy of a right-minded man, and especially a Christian, to make a gain in this way out of the unhappiness of the times" (c. 18, t. 14).

He opposes from religious grounds that rule of the Law of Nations, derived from Roman Law, that prisoners should be slaves.

"But even among Christians, it is universally agreed that being at war among themselves, they that are taken prisoners are not made

slaves, so as to sell them, or to enforce them to servile offices, or to impose upon them such things as they usually do in slavery. . . . And this at least (though but a small matter), hath the Christian religion brought to perfection, which Socrates attempted to have done among the Greeks but could not. . . . That such as are taken in war, are kept in safe custody till their ransom be paid" (c. 3, t. 7, 8). . . . "But in our days, not only among Christians, but even among Mohammedans, this right of captivity without the time of war, is worn out of use. The necessity being taken away by virtue of that connection or affinity, wherein nature hath joined us, which is now re-acknowledged to be between all mankind" (c. 3, 9, 19).

In harmony with his faith, he exhorts humanity towards women, clerks, farmers, merchants, and to all in battle who cry quarter, or offer to yield. He quotes the lines

> "Quique suos cives quod signa adversa tulerunt
> Non credat fecisse nefas!

And declares "cives" to mean not neighbours of the same town or country, but citizens of the same world (3, 11, 16), as if he anticipated the modern doctrine of international law, that governments may be enemies, and yet their citizens not hostile.

"All duels," he adds, "and trials by combatants, seeing that they are of no use, either to the decision of right or the ending of a war, but merely for ostentation of strength, are not only repugnant to our Christian profession, but to the laws of humane society" (c. 3, 15, 14). "No useless damage is to be done, and therefore what some divines have observed and taught, I must needs assent unto, that it is the duty of such commanders as would be thought Christians (as far as in them lies) to intercede for, and hinder the sacking and pillaging of towns and cities, especially of such things in them as add but little to the conquest being taken away, so that such acts Christian clemency and justice itself doth abhor. Surely there is a greater tie and obligation among Christians than there ever was anciently among the Greeks."

The great Christian publicist urges also to spare the property of those who have in no way offended as the

authors of the war, "for the rules of charity are of larger extent than those of justice" (3, 14, 4).

The violation of women, so common after the assault of fortified places, he condemns as contrary to the laws of war. On the latest conquest of Christianity and humane principle in the field of international relations,

Arbitration, the Dutch publicist of the seventeenth century is in harmony with the most advanced views of the nineteenth century. He says,—

"For if, both Jews and Christians have thought fit to appoint arbitrators among themselves to determine all controversies to the intent that brothers should not go to law with unbelievers, how much more reason is there that such arbitrators or judges should be chosen by us to prevent mischief far greater than going to law, namely: spoil, rapine, murther, yea and sometimes desolation, which are the unhappy concomitants of cruel war." "And indeed, it is very unfit for princes who profess themselves to be followers of Christ, to rush into arms one against another with so much bitterness, seeing that there are other means found out to compromise their quarrels" (p. 463). "And for this as for many other reasons, it will be very convenient, nay necessary, that constant diets and conventions of Christian princes should be held where, by the prudence and moderation of such as are not interested, all controversies may be composed; yea, and that some expedient may be found, to force both parties to accept of peace upon equal and just terms."

And the great publicist closes his immortal work with these memorable words:

"A safe and honoured peace is not too dearly bought if it may be had by foregoing as well the offending as the charges and damages of war, especially to us Christians, to whom our great Lord and Master hath bequeathed Peace as His last legacy." "God, who alone can do it, instil these things into the hearts of those who manage the affairs of Christendom!"

We have dwelt thus at length on the views of Grotius, because they have affected the relations of nations more, probably, than the writings of any publicist before or since

his time, and because they are so distinctly the fruit of Christian forces in the world.

Right over Heathen Territory.—One of the curses of the world has been the supposed right of nominally Christian peoples to take possession of heathen territory, and despoil non-Christian tribes. The Church has always supported this right. The famous bull of Pope Alexander VI. (1493) gave up in effect all the lands in North and South America, 100 leagues west of the line of the Azores, to the empire of Spain; and this supposed right was the source of endless wars and oppression, and the slaughter and slavery of thousands of Indians.

Queen Elizabeth gave a similar title to Sir Humphrey Gilbert over certain "remote heathen and barbarous lands" in North America. Though the Church was false to its Master in the spirit of these claims, the great writers on international law, imbued with His spirit, were nearer the truth. Grotius objects to any power or claim of the Christian Church over remote and heathen peoples.

Bonnor, a still earlier writer on this topic, declares, as we have seen, that war cannot lawfully be made by Christian powers against Saracens, merely on account of their faith.[1] Victoria[2] (about 1557 A.D.) says that the Pope has no temporal authority over the barbarous Indians or other infidels, and that Christian princes have no right, merely from the authority of the Pope, to coerce barbarians or to punish them.[3] Ayala holds the same views, and Alberici Gentilis.

[1] *L'arbre des batailles*, c. 35.

[2] Papa nullum potestatem temporalem habet in barbaros Indos, neque in alios infideles. (*Relectio de Ind.*, 2, 6.)

[3] Principes Christiani non possunt etiam auctoritate papae coercere barbaros, etc.

Puffendorf advocated equally liberal principles.

It cannot be said that the Spirit of the Great Teacher has as yet much affected modern international law on this important topic. Still a beginning has been made in teaching universal justice as obligatory from Christian to heathen, and from a great power to a weak.

Progress in Modern International Law.—Progress in international law we shall now proceed to test by the humane changes, both in practice, custom and law, shown in the public settlements, codes, treaties and acts of nations of the nineteenth century, and in the views of eminent publicists. The high-water mark of humane practice and theory in public law in this century is probably best shown in two documents—the Code of Instructions issued by the Government of the United States during the great Civil War, to their officers and soldiers, compiled by Prof. Lieber, and the proposed Code for a Law of Nations, compiled by Prof. Bluntschli, who has himself borne so distinguished a part in the practical application of these Christian and humane principles in the arbitration settlement of Geneva between Great Britain and the United States. From these two sources we shall attempt to ascertain what the Christian system has already accomplished in public law and custom, and what it proposes to accomplish in the future.

Privateering.—Apart from these, we will first examine, however, the changes made in "Private War" on the seas, or Privateering. Under the combined influences of the religious spirit and the mercantile habits, Private War on land, especially in Germany, as we have seen, was put an end to, and Courts of Arbitration (*Austräge*) in the twelfth and thirteenth centuries decided between the incessant contests and disputes of separate cities, counties and

provinces, until at length Law took the place of Force. Private War or piracy, however, still lingered on the sea, and individual merchants and different sea-ports were obliged to associate together to defend themselves from incessant robbery and plundering by corsairs.

The first great check to this was caused in the end of the fourteenth century, by the issuing of letters of marque or reprisal by various princes, authorizing certain individuals to plunder on the high seas in time of peace. Privateering was thus originally in the interest of public order. The first law in the history of France authorizing privateering appeared in 1400, and distinctly characterized it as a means of preventing Private War, where individuals took vengeance in their own hands.[1]

In the same century similar authorizations were issued by the Low Countries, England and various powers.

An English Act of Parliament (1414) required privateers to bring their prizes to an English port, and to make declaration of capture to the justices of the peace, under penalty of confiscation of the prize and the captor.

During the fifteenth and sixteenth centuries, privateering was often well regulated, and, owing to the comparative unimportance of commerce then, did not attain to so great and injurious a development as in the succeeding centuries. During the seventeenth and eighteenth centuries, the commerce of both neutral and belligerent powers suffered immensely from this species of robbery. The Christian spirit (as the words of Grotius show) was always opposed to it. Isolated efforts were made to abolish it. Thus in 1675, Holland and Sweden make a treaty, agreeing not to

[1] Aucun . . . à ses propres despens pour porter guerre à nos ennemis ce sera par le congé et consuitement de nostre dit amiral ou son lieutenant. *L'Ordonnance sur le faict de l'amirandé* (*Hautefeuille*, vol. ii. p. 340).

issue letters of marque, but this does not appear to have been a permanent agreement. In her w ırs with Turkey between 1767–74, Russia did not employ privateers. In the eighteenth century, privateering had become an organized piracy, and almost every treaty attempted, but in vain, to restrain it. In that century an American, who though often called an unbeliever, was filled with the truest spirit of Christianity, has the credit of bringing about one of the first important treaties which abolished it.

"It is for the interest of humanity in general," says Franklin in a public despatch to the British Commissioner in 1783, "that the occasions of war and the inducements to it, should be diminished. If rapine is abolished, one of the encouragements of war is taken away, and peace therefore more likely to continue and be lasting. The practice of robbing merchants on the high seas, a remnant of the ancient piracy, though it may be accidentally beneficial to public persons, is far from being profitable to all engaged in it, or to the nation that authorizes it."[1]

And again,

"The United States though better situated than any other nation to profit by privateering, are, so far as in them lies, endeavouring to abolish the practice by offering in all their treaties with other powers, an article engaging solemnly that in case of a future war, no privateer shall be commissioned on either side, and that merchant ships shall pursue their voyages, unmolested."[2]

Through Franklin's influence, the treaty between Prussia and the United States in 1785, contained the well-known clause in which each power gave up the right of commissioning privateers against the other, in case of war. This provision however was not revived in the renewal of the treaty in 1799.

So well entrenched was this practice, that a distinguished

[1] Letter to Mr. Oswald, British Commissioner (*Franklin's Writings*, vol. ii. p. 485; ix. pp. 41, 267).

[2] *Letter of Franklin*, 1785.

French publicist (Hautefeuille) even in this century ventured to say, "The opinion generally adopted on the utility of privateering against an enemy, and especially, the object not avowed but real, the ruin of neutral nations, will always prevent a certain nation from consenting to the abolition of a practice, upon which it founds its maritime greatness."[1] This publicist might have lived to see "a certain nation" taking part in the congress which abolished it. Still it is to be admitted that the general policy of Great Britain up to this century has been adverse to humane progress in maritime law, with reference to privateering, blockade, and the law of contraband. Her course has certainly tended to make war "bellum omnium contra omnes" (a war of all against all) instead of limiting it, under the modern and more reasonable view.

The great reform in international law, as limiting the effects of war, dates from the Congress of Paris, 1856, wherein all the great Powers of Europe, together with Turkey and, later, forty other States, agreed to the abolition of privateering, and to the rules which protected neutral commerce,[2] and confined wars as far as practicable to belligerents. Unfortunately for the fame of the United States as a pioneer in humane progress, it will be remembered that her government refused to accept the rule abolishing privateering, unless there were accompanied with it a stipulation of the inviolability of private property on the sea, excepting only contraband of war. This last is a reform which, as is the case with the partial protection of private property on land, requires the slow action of

[1] *Les Droits des nations neutres*, vol. ii. p. 340.

[2] That the neutral flag covers an enemy's goods, and neutral goods are not seizable among an enemy's goods—contraband of war in both cases being excepted; and that a blockade, to be real, must be effective.

Christianized opinion. Whether the American government were sincere in urging it at that time, is at least open to question. At this time, there can be no doubt that the American people are heartily in favour of it. The mercantile community of Continental Europe, especially in Germany, urged this reform in the years 1859 and 1860, with much enthusiasm. It was presented and voted on favourably in many legislatures. There is little doubt that a future year, not far distant, will see its general adoption. It rests on the reasonable idea, that war as a terrible and barbarous Court of Arbitrament, should do no needless damage, but only what furthers the decision and determines the final issue.

The United States during the war of the rebellion offered to accede to the Declaration of Paris, without the condition it had before demanded. The proposed separate conventions, however, on this subject fell through. No letters of marque were issued by the American government during the civil war, though authorized by Congress.

The German and French governments in the war of 1876, held to their agreement and employed no privateers. Prof. Bluntschli in his proposed code (No. 670), declares it to be an article of modern international law, that privateering is abolished.

Inviolability of private maritime property.—The inviolability of private property on the sea was admitted in the treaty to which we have already referred—that of 1785 between Prussia and the United States: and was recognised in treaties of the South American States, in 1851 and 1856. In the wars of Great Britain and France with China, the right of maritime capture was suspended.[1] In March 1865, the Emperor of the French made public restoration of such private vessels, belonging to Mexican citizens, as

[1] *Field's Code*, p. 530.

had been condemned by prize courts, and the proceeds of which had not been finally adjudicated upon. European governments have often at the close of wars, restored captured ships and formed mixed commissions to ascertain the damages incurred. In 1861, a treaty was framed between France and Peru, which exempted all private property from capture.[1] The same principle was admitted by Prussia, Italy and Austria in the war of 1866: in 1868 the parliament of Germany passed a resolution, inviting the chancellor to obtain the acknowledgment of the safety of private property on the sea, during war; no public acknowledgment however was obtained. In the Franco-German war of 1870, King William in his proclamation of 18th July, declares that French merchant ships can neither be brought in nor captured by the Federal marine. This advanced measure however was not responded to by the French government, so that before the close of the war, the German military authorities believed themselves obliged to suspend this rule. The French Government of National Defence however (28th Oct. 1870) expressed the hope that the progress of ideas would in this matter ultimately soften the evils of war.[2]

In July, 1870, the Secretary of State of the United States publicly gave utterance to the expectation, that the people would soon have the satisfaction of seeing the principle universally recognised of the abolition of maritime prizes.

The objections made to this reform, even by so enlightened a publicist as Dana, seem of little weight. Modern wars are of so concentrated and terrible a character, that the damage done to individual property on the sea, has little influence on the issue. It is merely a useless damage, which modern humanity condemns, even toward an enemy

[1] *Field's Code*, art. 846. [2] *Bluntschli*, 665 n.

These two great reforms then—the abolition of privateering and the inviolability of private property on the sea—may be considered as almost won by the humane influences working in the world under Christianity. The principle which lies at the base of this and similar reforms, is one which will be more and more recognised by all those truly feeling the modern teachings of humanity: the principle that war is between states and not individuals. War, like the "judicial duel" of the Middle Ages, is a process, terrible and barbarous indeed, whereby justice is sought between two contestants. The citizens of each state are only considered as enemies, when they take a personal part in the struggle, or discharge public duties.[1] It is true that many eminent publicists, American and English, do not admit this principle. According to Sir J. Nicholl, "There could be no such thing as a war for arms and a peace for commerce." Twiss, in his "Law of Nations," says with more antithesis than truth, "because private war is inconsistent with public peace, it follows that public war is equally inconsistent with private peace"; Vattel (book III. c. 5) declares all the citizens of belligerent nations, enemies, even the women and children; and Kent states that all citizens of belligerents are in hostility with one another.

Modern practice however under the influence of "the enthusiasm of humanity" is more and more conforming itself to the humane principle. Even as far back as the French Revolution, Portalis, minister of the Republic, uttered these remarkable words at the opening of the Council of Prizes: "Between two or more belligerent nations, the individuals of which those nations are composed are only enemies by accident; they are not so as men; they are not so even as citizens; they are so

[1] *Bluntschli*, Nos. 530, 532, etc.

only as soldiers."[1] In the war of 1870, King William of Germany proclaimed: "I make war against French soldiers not against French citizens," assuring the citizens of protection to their property, so long as they did not indulge in acts of hostility against the German troops.

The New Codes.—The American Instructions and Prof. Bluntschli's Code, forbid putting human beings to death in war, without object or utility, or the wounding, torturing, maltreating or enslaving a prisoner, or violating or assailing women.[2] Both demand the protection of the religion, the language, the intellectual culture and honour of the vanquished.[3] When one recalls the bloody wars of the past, whereby one form of religion was to be forced on a people dissenting, the advance in modern international customs is made clear to the most doubting. Both of these codes forbid all carnage and destruction which does not tend to the re-establishment of justice—the object of war. Even the killing of an armed enemy uselessly is forbidden.[4] Under the general principle of which we have spoken, the plundering of property in an enemy's country[5] is absolutely forbidden by the more advanced rules of modern international law, excepting it be the fortune of the belligerent state itself, the arms and equipment of the conquered soldiers, and articles contraband of war. There is still also left in question the plundering of the property of citizens in a place taken by assault, and the right of maritime prizes; but both these barbarous privileges of war may be said to be passing away. All public buildings for scientific, æsthetic or philanthropic

[1] *Bluntschli*, No. 531.
[2] *Amer. Instr.*, 16, 23, 42. *Bluntschli*, No. 574.
[3] *Amer. Instr.*, 37. *Bluntschli*, No. 579.
[4] *Amer. Instr.*, 68. *Bluntschli*, No. 579
[5] *Ibid.*, No. 657.

purposes are required to be respected in an enemy's country; and it is no longer according to international usage[1] to carry off works of art from a conquered country or to sell them to defray the expenses of the war. It is true that many of the reforms spoken of above have been only carried out in the practice of one or two nations, or are merely proposals of eminent publicists. Still the whole body of international law is merely the expression of the moral ideas and principles of leading nations with regard to their relations, without any fixed authority but custom, and no basis but justice or the highest utility. The theories of eminent writers resting on the strictest morality, and above all, the practice of any one nation, must profoundly influence all nations.

One of the terrible abuses of war is in "reprisals." Humanity and religion have as yet scarcely influenced these. The American Instructions contain indeed excellent sentiments on this subject, and they were not violated by the United States during the civil war. "Civilized nations," says Art. 27, "acknowledge in retaliations the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage. Retaliation will therefore never be resorted to as a measure of mere revenge, but only as a means of protection and retribution, and moreover cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful enquiry into the real occurrence and the character of the misdeeds that may demand retribution. Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of a regular war, and by rapid steps leads them to the internecine wars of savages." (Art. 28.)

Prof. Bluntschli is equally humane in his view of this

[1] *Bluntschli*, No. 650. *Amer. Instr.*, 36.

terrible measure.[1] The recent European conventions have however been able in no degree to mitigate the law of reprisals, and they remain the great cruelty of war.

Three recommendations are now made from various quarters, as to changes in international customs which will tend to prevent collisions and limit war. They are first, that the right of blockade be limited to naval arsenals and places defended by armed forces. This would leave trade in food or similar articles with small and undefended ports, open and undisturbed. Another is that the definition of "contraband" should be restricted to articles intended directly for war, such as guns and ammunition. This again would render trade freer, and preserve non-combatants from much annoyance and suffering. A third is, that the right of search be restricted so as only to touch contraband articles, and impede efforts to break a blockade. All these are in the line of modern reforms.

The Wounded.—Nothing disgraced the humanity of the past, like the neglect and cruelty practised towards the wounded in war. Under modern law, the ambulances and military hospitals for the wounded are held to be neutral property, and are respected and protected by the belligerents. In 1864, a convention was held at Geneva for the amelioration of the fate of the wounded during military campaigns; and this compassionate effort led the series of international movements, one of the latest fruits of the Christian spirit, designed to alleviate the evils of war. An agreement was signed and adopted by the Swiss Confederation, the United States of America, and nearly all the Great Powers of Europe, having for its object to neutralize everything employed in the care of the wounded. This agreement was adopted by Austria after the war of 1866, and by Russia in 1867. In a conference, held at

[1] *Bluntschli*, No. 502, etc.

Geneva, in 1868 of the principal European States, this humane agreement was extended to the care of the wounded on the sea. The duty of both belligerents to provide, so far as is practicable, even for wounded enemies, is now a recognised feature of international law, and may be considered as the first public effort in the history of mankind to carry out one of the foundation rules of Christianity, "Love your enemies."

The care of the wounded in the American civil war, and the Franco-German war, by private associations of philanthropic persons working in combination with the governments, is one of the latest practical fruits of religion, and has relieved an untold amount of human misery.

The Convention of St. Petersburg in 1868, entered into on the proposal of Russia, bound the leading European Powers to greater humanity. It limited the objects of war "to weaken the military forces of the enemy:" that for this purpose, "it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men or render their death inevitable; that the employment of such arms would therefore be contrary to the laws of humanity." The Great Powers accordingly renounced the employment of projectiles, explosive or charged with inflammable substances, below a given weight.

The drift of all international policy in regard to neutral powers has been in the peaceful direction, and therefore in the channels which religion would suggest. War is as much as possible to be limited in its evils. As we have already said, the abolition of privateering will lessen to an immense extent the curses of war to those who are engaged in peaceful occupations. The customary notice now given to merchant vessels, allowing them several weeks to depart

after the declaration of war, is a reform in a similar direction. The Rules of Paris (1856) have settled the dispute of ages in favour of neutral powers. A free ship carries a free cargo, and a free cargo cannot be seized on an enemy's ship. Blockade can no longer annoy a whole world of peaceful persons, any farther than it is a real blockade.

The British Government, among others, have been ready to acknowledge that the progress of civilization has brought about stricter obligation in regard to neutral supplies to belligerents,[1] and the duty of limiting war to the smallest extent possible.

Arbitration.—The highest result of the Christian spirit, as seen in public affairs in this century, is the disposition to settle disputes and prevent war, by arbitration. The great reform of the Austräge in the Middle Ages was the beginning of modern civilization, or the era in which law and courts took the place of arms between individuals and opposing cities. It is by no means improbable that the arbitration of the nineteenth century is also the beginning of a higher Christian civilisation, when international law and international courts shall take the place of war and force in the settlement of disputes between nations. As it may be supposed, settlement of public disputes by arbitration is not entirely a modern discovery. While the instincts of right and justice existed, there must always have been a possibility of such a settlement. Among old instances, is that of Henry II. of England between the States of Castile and Navarre—a decision contained in twenty-eight articles;[2] and another according to the latest proposals of international jurists, between the Emperor

[1] Despatch of Earl Granville to the Prussian Government, Sept. 15th, 1870.

[2] *Rymer's Fœdera*, p. 48.

Frederick and certain cities of Lombardy (1158 A.D.). The question was as to the justice of his claims to be the successor of Augustus and Charlemagne, and the arbitration was made by four professors of the School of Bologna.[1] Even as far back as the sixteenth century, different kings of European States are found determining difficulties by this reasonable mode. In one instance (1546), the Kings of France and England settled a dispute in regard to a large sum of money by a reference of the matter to four learned jurisconsults, an instance of a practice to become common, of referring matters of international law to private students of the science. Subjects more difficult to settle than differences about money were referred in that century to arbiters. The King of Spain, and Switzerland, decided a dispute in regard to the boundaries of Franche Comté by arbitration.[2] Even the claims of a sovereign power were referred to a foreign decision; as when the Archduke of Austria and the Duke of Würtemberg, each claiming a certain county (Montbeliard), laid the litigation before the Parliament of Grenoble.[3]

It is to the credit of both Great Britain and the United States, that they resorted to arbitration in one of their first treaties. After the Independence of the American Colonies, difficulties arose between them and the mother country as to the north-eastern boundary of the Union. By the Treaty of 1794, the dispute was to be finally decided by Commissioners chosen in the following manner: one by the King of Great Britain, another by the President of the United States with the advice and consent of the Senate, and the third—in case of disagree-

[1] *Wheaton.*

[2] *L'Arbitrage International*, De Card, p. 19.

[3] *Ibid.*

ment between the two—to be chosen by the above Commissioners. Two other Commissioners were appointed to determine indemnities due the subjects of each power, for damages. In this treaty is undoubtedly indicated that greatest practical exemplification in modern times of humane principles—the settlement by the Geneva Arbitration.

Mediation.—The famous Conference of Paris (1856), as we have said, originated or confirmed some of the important reforms of modern international law. It discussed another subject of the deepest importance to the future of humanity—the prevention of war, by the mediation and collective decision and arbitration of the Great Powers of Europe. Article eighth required if there arose between the Sublime Porte and one or more of the signatory Powers, a disagreement which threatened their peaceful relations, that these powers before resorting to force should apply to the other contracting powers for their mediation.

The discussion on this advanced and reasonable proposition showed that the representatives of the Great Powers of Europe were by no means peculiarly favourable to such proposals. The results of the last few years have proved that even this mild suggestion, and the wishes expressed by the plenipotentiaries, that "All states among whom disagreements arose, would, before appealing to arms, have recourse to the good offices of a friendly Power," were far beyond the old barbaric habits of Europe, and produced little practical effect. Still they indicate the ideal which has arisen before the thoughtful minds of the age,—the constitution by the Great Powers of Europe of a kind of combined Court of Mediation and Arbitration, which should prevent war and even enforce its decisions in the interest of general peace.

In only two cases has the mediation of the great European Powers since 1856 brought about peace: one in the case of Luxembourg between France and Prussia in 1867—a mediation on the part of England which only delayed a few years the terrible war that afterwards broke out. The other in 1869, the case of Candia between Turkey and Greece—a settlement by the Great Powers which was by no means in the permanent interest of either peace or justice.

No mediation was able to prevent the terrible conflict of 1870.

If we refer back to European history in this century we shall find a number of instances, wherein the reasonable settlement of differences between nations by arbitration has been successfully attempted.

During a war of France with the Moors, certain English merchant vessels were captured by the French on the coast of Portendik, it was asserted without sufficient notice of the blockade. The claims of the English merchants injured were referred by the French and English cabinets to the King of Prussia, and on November 9th, 1843, a decision was given, that a fine should be paid to the English merchants injured by the French government:—a fine fixed afterwards at 4,770 francs by a mixed commission. A war was thus avoided and justice done, to the satisfaction of all parties.

The case of the *Armstrong*, wherein an American ship was destroyed in a neutral harbour (Fayal) by an English vessel of war, was a delicate one, involving a claim on a neutral power for injuries sustained within its limits, by a foreign power. The claim for damages on Portugal by the United States was referred by both powers for settlement to the President of the French Republic. The arbiter decided (Nov. 30th, 1852) against the United States; the decision was quietly accepted and war averted.

In 1862, a case of arbitration occurred, where national pride might easily have led to violent measures. The officers of a British ship, *La Forte*, insulted a Brazilian sentinel and were thrown into prison, but soon afterwards released on the demand of the British vice-consul. The English Cabinet demanded reparation from the Brazilian authorities, and the dispute was referred to the King of the Belgians, as arbiter. He decided in favour of Brazil, and the decision was accepted.[1] A difference occurred in 1821 between Chili and the United States which aroused much excitement, and nearly brought on a war between the two countries. The Chilian vice-admiral had violated the rule of international law which protects private property on land, especially that of a neutral: he ordered the seizure in the territory of Peru of considerable sums of money, the fruit of the sale of merchandise brought in by an American merchantship, the brig *Macedonian*. The United States government addressed a note to the government of Chili, demanding the restitution of the moneys seized. The ministry of Chili refused to accede to the demand. Popular feeling in the United States was in favour of war to enforce the claim. The dispute however was at length submitted to arbitration, and that wise monarch, Leopold I., King of the Belgians, became again the arbiter. His decision was not rendered till May, 1863, and was fully in favour of the United States. Great waste of property and loss of life were saved, and both parties remained in amicable relations. An arbitration between the governments of Peru and Japan in 1875, is interesting as one of the first instances in which a non-Christian power accepted this method of settlement. The case was that of the *Maria Luz*, a Peruvian vessel arrested in the port

[1] De Card, p. 59.

of Kanagawa by the Japanese authorities, and was decided by the arbiter, the Emperor of Russia, in favour of Japan.

Disputes as to Territory.—Disputes however in regard to claims on territory are thought to be of a more vital nature, and not so easily settled by umpires. The discussion between Great Britain and the United States in regard to rights of territory on Puget's Sound was one of this nature, and endangered the relations of the two countries during a considerable period. A treaty however was signed on June 1st, 1863, whereby the question was referred to two arbiters, one being named by each government, who had power to name a third, if they disagreed. They were not even obliged to choose the third, so fair and just were their views, and their decision, rendered September, 1867, was received by both parties without protest.

The similar dispute in regard to the north-western boundary with Great Britain had seemed to the American government so unreasonable, that it had declined arbitration six times in regard to it. The case however was finally referred for arbitration to the Emperor of Germany, and was decided in favour of the United States, October, 1872; this decision closing a century-long dispute on boundaries.

A difference occurred also between Great Britain and Portugal, relative to the rights of each government to the island of Balama, on the western coast of Africa. The matter was referred in 1869 to the President of the United States as arbiter: his decision was in favour of Portugal, and was received by England without opposition.

The Alabama.—The great affair of the *Alabama* and of the injuries inflicted by the rebel cruisers is too fresh to need much recapitulation. The American people felt itself profoundly injured and wounded in the civil war, by the tacit permission given by the British government for the

manning and fitting out of the rebel cruisers, and the connivance of numbers of the English people in this violation of neutrality. The injuries inflicted by these vessels, and especially by the *Alabama*, upon American commerce, were enormous. Indirectly the American commercial marine was almost annihilated by them. So bitter was the resentment throughout the Union against what seemed a flagrant violation of the rules of justice and fair dealing on the part of the British government, that popular feeling was entirely ready for war, and only the prudence of the American authorities, already sufficiently burdened by the immense civil struggle, restrained the passions of the people.

The correspondence with Earl Russell of so cool a *diplomat* as Mr. Adams shows the degree to which feelings on each side were aroused. The British minister, after endeavouring to justify the action of his government towards the rebel cruisers, went so far in his despatch of Aug. 2nd, 1865, as to declare that the British government, having fulfilled all legal obligations, would never consent to refer the contest to arbitration.

Nor did the close of the struggle and the success of the Union diminish the bitterness of feeling against the British Government throughout the North. The ministry, however, of both Powers appear not to have given up all hopes of ultimately settling the difficulty by a recourse to measures of justice and right reason. The American ambassador, Reverdy Johnson, submitted a proposition for arbitration to the British government, which was readily accepted. But he had accompanied or preceded it by public utterances, so far from expressing the real opinions of the American people on the gravity of their wrongs, that they created an extreme opposition to the proposal in the United States. The reference to arbitration was rejected by the American Senate by 54 votes to 1.

The President, in communicating this decision to the American minister, declared the conditions of the proposal unsatisfactory, but affirmed his readiness at the proper time to meet this question on a friendly footing. The dispute seemed thus as far from settlement as ever.

It is fortunate that in each country there is a large body of persons somewhat guided by Christian principles, whose opinions exercise considerable influence on public men. Under any popular excitement, the voice of reason and religion is not heard; but as soon as this dies away, the statesmen are more or less governed by the Christian belief of the nation.

It was not till January, 1871, that an offer of arbitration was again made—this time by the British Government. The offer was accepted, and a mixed commission was formed of five Englishmen and five Americans, to frame a tribunal of arbitration. This tribunal (May 8) was comprised of five members, to be chosen respectively by the President of the United States, the Queen of England, the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil. The Commission were to meet at Geneva. It is not necessary to describe the treaty in detail.

The Treaty of Washington was ratified on May 8th, 1871, by the American Senate by a large majority, and approved by the British Parliament, though with many objections. Earl Grey said justly of this treaty in a public banquet, that it would exercise an incalculable influence on the future of the world in procuring for it the first of earthly blessings—peace.

The Commission met December 15th, 1871, at Geneva, and on the 14th September, 1872, rendered its decision, condemning England to pay to the United States the sum of $15,000,000, as indemnity for the direct injuries done

to its commerce, by three of the Confederate cruisers. The British Commissioner alone refused to sign the sentence.

The English Government, after some objections to the interpretation of the rules, accepted the decision, and paid the indemnity.

The Geneva Arbitration of 1872 may be fairly held as one of the great steps in modern progress towards right reason in the settlement of international difficulties. It is true that its influence for the time is somewhat diminished by the disgraceful delays and disputes in regard to the distribution of the indemnity among claimants in the United States. Then the settlement, since, of the fishery question with Great Britain by an arbitration which seemed to the American people unfair and unjust to their interests, has for the time weakened the power of this method of settlement in the United States, as did the results of the Geneva arbitration in England. But these are only passing objections. The two leading commercial powers of the world, in a time of great bitterness of popular feeling, and when one side felt itself deeply injured, under circumstances which in all past history would have been thought to justify war, have deliberately controlled passion and submitted their differences to the most impartial earthly arbiters. This is one of the first prominent instances in history of the influence of Christianity on the relations of nations.

The sketch we have given of different cases of arbitration is a list of the "victories of peace." It is well completed by the most momentous of all—the Geneva settlement.

In some future and better age, when Christianity no longer touches only the surface of society but has imbued whole races of men and affected the relations of governments, it will not be battles which constitute history or

the record of fields of blood which makes a nation's glory, but the historian will delight to chronicle these first gleams of a higher civilization, when reason was taking the place of passion, and law of force, and Christianity of hatred and revenge in the relation of one nation to another.

The question is often put, whether arbitration can ever become universal, or whether the principles of Christianity can ever imbue whole peoples as they have inspired individuals.

Looking at what this Religion has done with a few individuals, we may judge of the far future with mankind, and, from a few traces now in international laws and customs, we may fairly infer what it may accomplish after ages of influence upon nations and governments.

We have beheld it redeeming the lot of the prisoner of war from one exposed to massacre and slavery to that of the captive humanely treated under modern international customs; we have seen it ministering to the wants of the wounded and protecting all that belongs to their care even in the army of an enemy. We have found it prohibiting even the killing of an unarmed enemy, forbidding all useless destruction of life and property, all injury of women or defenceless persons, all objectless wasting of fields and fruits. We have seen it doing away with piracy and privateering, with the plunder of philanthropic and scientific buildings, with all private booty, and even urging the protection of private property on the sea.

What but the influence of the "Religion of Love," direct or indirect, has done so much to limit the evils of war, and to confine them to the belligerents?

It is true war is still the gigantic evil of history—the one great travesty of the faith which leading nations profess. Yet the spirit of this Faith has won its greatest

triumph in finally introducing arbitration between disputing nations.

There can hardly be a doubt that in the distant future arbitration in some form will be the great method of settling international differences. For the coming few centuries it will probably only be applicable to exceptional cases, when national pride and passion are not too much aroused. But the increasing power of the religious sentiment and of right reason among men, and it may be the growing influence of the labouring classes, who suffer most from war, will force cabinets more and more to this mode of settlement.

If we look at the progress in the slow abolition of "Private War" in Europe, we shall conclude that in some form the civilized world will go through a similar change and development, and rise out of the comparatively low moral condition of the nineteenth century, as Europe rose out of the barbarism of the thirteenth. The probable course of development will be first in the Great Powers of the world agreeing beforehand when a given treaty is framed, that any difference in relation to that particular treaty shall be determined by arbitration. The postal treaties of the United States with foreign powers contain a clause of this character. In 1853 the American senate adopted a resolution designed to accomplish this humane purpose, to the effect that the President should insert in all future treaties an article binding the contracting parties to submit all differences between them to impartial arbiters. In December, 1873, a resolution even more extended, by Senator Sumner, was presented in the senate requiring the government to recommend the adoption of arbitration in its relations with other nations. The greater part of the European treaties of commerce and the international postal treaties contain provisions relating to arbitration, in case of disagreement as to the treaties. As we shall show later, the arbitration clause has been recommended to the attention of ministers by the votes of the Belgian, Dutch, and Swedish chambers. The habit of arbitration will thus be introduced in international relations. And in all great legal reforms habits have a marvellous power. At first it could only be employed in comparatively unimportant disputes, but gradually it would come into play in more vital matters.

The next great step in the application of right reason to international affairs will be the formation of international codes or rules of law, which will affect the opinion and the practice of the civilized world. We have already seen the great influence of Grotius in softening the severities of war, and binding different peoples in more merciful relations. It is a matter deeply to be regretted that American and British publicists since his time have done so little to express Christian and humane ideals in their treatises on international law. In a science which rests so much on opinion and the principles of equity, each author might have advanced it almost as Grotius did, by urging all practicable principles of Christianity. The new Codes of which we have spoken are both great steps in advance, and must influence all future relations of nations. Another project of an international code by an American publicist, D. D. Field, has attracted much attention, from its just proposals. It will be a long period before these merciful essays towards a form of law which shall govern all the civilized world will be accepted. Yet they make a foundation for the better future. The opinion of the world already has an immense power over all nations. And these careful embodiments of its humane feelings and ideas must add to this power.

Courts of Arbitration.—But the final step towards the

"Universal Peace" so long dreamed of by moralists, will be the formation of international courts of arbitration, vested with the powers of courts by all the great nations. It is true that the times are not ripe for this as yet, and may not be for many centuries. In 1873, Mr. Richard presented a motion to the British Parliament, only indicating an approach towards such a reform, to the effect that the Queen be humbly requested to instruct her Minister of Foreign Affairs to enter into communication with foreign powers, having for his object to ameliorate international law, and to institute a system of permanent and general international arbitration.

Mr. Gladstone and other orators expressed many doubts of the project: but the motion passed (July 9th) after much discussion, and on the 11th the Queen replied to it in conciliatory words which guardedly expressed much sympathy in the project, without committing the government to fixed promises.

In the Italian Parliament, Sig. Mancini presented (24th August, 1873) a somewhat similar motion to Mr. Richard's, except that he confined arbitration more particularly to disputes on commercial interests or similar subjects, and he would introduce into all treaties a clause referring disputes on them to arbiters, and pursue the previous policy of Italy in rendering uniform and obligatory, the rules of "private international law." This moderate position was well received in Italy.

Other States followed this example. The Lower Chamber of the Kingdom of Holland (Nov. 27th, 1874) passed a motion of a similar character, and urging arbitration for all international difficulties. The Belgian House of Representatives adopted a similar resolution unanimously in favour of arbitration (Feb. 17th, 1875). The Swedish Second Chamber voted by a large majority an address to

the king, praying for efforts towards a permanent tribunal of arbitration between nations.

It will thus be seen that many public bodies in Europe and America have seriously considered this benevolent project. It is well known that eminent individuals in advance of their age, have long urged it as the greatest reform needed among nations. Grotius, as we have shown, contemplated it as a possibility. Leibnitz, William Penn, Bentham and many others argued for it; Kant's project for a universal peace through arbitration, and the similar views of the Abbé de St. Pierre and of Rousseau, are too well known to need recapitulation.

These humane purposes and projects took a definite form in the International Conference of Brussels in 1874, called especially at the request of the Russian government. The invitation to this Conference contains words worth citing.

"The more that solidarity," says Prince Gortschakoff, "becomes developed which tends in these times to bring together and to unite nations as one family, the more their military organisation tends to give to their wars the character of conflicts between armed nations, the more necessary does it become to determine with greater precision the laws and usages admissible in a state of war, in order to limit the consequences and diminish the calamities attendant upon it, so far as may be possible or desirable."[1]

The fifty-six articles which were especially to be considered by the Conference embraced most of the points so thoroughly treated in the American Instructions and the Bluntschli Code. The Conference does not seem to have produced much effect, perhaps partly from the want of sympathy in its objects by the British government,[2] and partly because the Great Powers have not reached the

[1] Despatch of Prince Gortschakoff, March 4th, 1874.
[2] Despatch of Lord Derby to Lord Loftus, June 20th, 1875.

point of moral advance in which these reforms seem indispensable.

The formation of an "Institute for the Codification and Improvement of International Law" in Europe and the United States, which has already urged the most advanced reforms through eminent authorities, is another evidence of the power of Christian opinion on this great subject.

The main objections to the formation of a permanent Court of Arbitration with executive powers furnished by each nation, are undoubtedly the fear that such an authority would threaten the independence of single States, and that the execution of its decisions would only create new wars, instead of abolishing old. But it would not be difficult to form a judicial authority with limited powers, which would only have the right to decide and act upon definite questions, such as do not affect the independence of a State. Each nation would yield up certain of its rights to a power of which it was a part, in the interest of general peace. Of course, great care would be necessary to prevent the Court from becoming corrupt or an agent itself of tyranny and injustice. These objections, though formidable, do not seem insurmountable. Almost as great were overcome in constituting the Federal Court of the United States. The interest of all nations is especially in peace. And many temporary annoyances might be endured, in a certain yielding of powers, for the sake of so great a blessing. The enormous expense of large standing armies would be in part saved, as each power would need only to contribute its quota to the executive forces of the International Court. Even questions which are supposed to affect the honour or independence of a State, would often come before such a Court, not for executive decision but for its opinion. And an opinion from such an authority would have an incalculable effect on any civilized power. Even the mere

stopping, before the rush to arms, to hear an impartial judgment on the quarrel would exert a profound influence on the coming belligerents. The voice of reason and religion would thus have a chance to be heard.

The full christianization of international law awaits the slow action of christianized public opinion. But much may be done, as much as has been done, to humanize the relations of nations, to soften the asperities of war, to lessen its causes and finally to prevent it. If the Christian Church throughout the world were finally aroused to its duties in this matter, and were aware how far behind the precepts of the Master His nominal followers are, there would long ago have been a public opinion in Europe and America which would have rendered any war difficult if not impossible.

Peace among all men and all nations is the ideal presented by Christ. And by one class of means or other, when at length His teachings have thoroughly permeated mankind, this ideal will be attained.

Outside of the nominally Christian nations, there is no international law. The Turks appear to have had little idea of it till instructed by European nations. The Koran's teachings tended in the very opposite direction, and made war the natural condition towards non-Mohammedan races, and treachery justifiable towards an "infidel." The Mohammedan peoples in the north of Africa lived in a constant state of hostility with all foreigners. The Chinese, with all their advancement in arts and sciences, seem never to have thought of any code of humanity and justice towards foreign nations.

The Japanese have indeed recently made efforts to introduce the international law known to the Christian nations, to their own people; and one proposed code[1] at least has been translated.

[1] D. D. Field's.

No Buddhist, so far as we are aware, has written on this topic, nor does a Buddhistic code of laws and customs between different peoples exist.

Nor, as we have shown, does international law owe much to Greek culture or to Roman law. The first general tinge of humanity in the world's relations, mercy to the wounded and helpless, the softening the rugged face of war, the binding different nations in a certain bond (feeble though it be) of brotherhood, the disposition to refer injuries to arbitration rather than violence—these are the *Gesta Christi.* And when at length Cicero's dream[1] shall be realized, and there no longer be one law at Athens and another at Rome, but one universal law for all nations and times, simple, eternal and immutable, "the ruler and deity of all men,"—even the law of humanity and justice, then will the great law-giver and embodiment of it be the "Son of Man," whose words shall then guide and inspire nations, as now individuals.

[1] *Frægm. de Rep.*, lib. iii. 22.

CHAPTER XXVIII.

SLAVE TRADE AND SLAVERY IN MODERN TIMES.

SLAVERY, as we have previously shown, had mainly disappeared in Europe at the close of the Middle Ages. The peculiar influence of the Christian religion in teaching the brotherhood of man, and the priceless value of each human being, had everywhere undermined it; the formation of free communes in the large towns had given it a deadly blow. One effect of the crusades had been to break up classes and loosen the bonds of slavery, and thus under various forces, but most of all the moral, slavery had given place to serfdom, and serfdom itself had in many countries almost passed away.

In the fifteenth century there was still a trade in Mohammedan captives among the Italian states, and here and there in such countries as Greece, the enslavement of whites, and slaves were occasionally held in various civilized states. International custom recognised also the right of enslaving prisoners of war. But slavery, under the power of strong moral forces, was virtually disappearing, when two momentous events occurred which overbore the moral power working in European society, and let loose a swarm of curses on the world such as mankind had scarce ever known. One was the first voyaging to a populated and barbarous coast where human beings were a familiar article of traffic; and the other, the discovery of a new world,

where mines of glittering wealth were open, provided labour could be imported to work them.

The introduction of negro slaves into Europe in the fifteenth century would have been of little account, had America never been discovered. They would have been merely ornaments of wealthy houses, but as labourers would have been speedily vanquished in the struggle with the peasantry of Europe. In the West Indies and America, however, they entered into competition with a weak race already disappearing—the native Indians; and they became tools of a powerful and covetous people, who used them to extract sudden wealth from the ground or the mine. Hence arose the most dreadful curse which has perhaps ever afflicted humanity—the African slave trade. Almost all other human ills have their mitigating features. War is a struggle where heroism and courage and effort may come into play, where men stake all on a last effort, and expect wounds and death if defeat come. Even women and children may take with resignation that which follows the misfortune of those nearest them, and which belongs to the chances of war. Captivity, too, may not always be to them worse than their former condition.

The vices of men bring with them a certain degree of pleasure, and their penalties are in part self-inflicted. Disease and pestilence and earthquake seem to convey calamities as if from upper powers, and are borne by multitudes of men in common. They appear unavoidable and necessary.

But when one thinks that during four hundred years, men and women and children were torn from all whom they knew, and sold on the coast of Africa to foreign traders; that they were chained between low decks so that there was not even room to rise, and thus in filth and disease

and loneliness, the dead often chained to the living, made that horrible "middle passage," each morning the corpses being thrown into the sea, the living when temporarily released, plunging into the ocean as the least of sufferings, or the sick dying from heart-ache and home-sickness; that during all these hundred years the sighs and groans and prayers of these wretched creatures rose to heaven; and when they reached the New World, they were consigned to only a less degree of misery in the mines, or under the lash in the cane and rice-fields; that many millions were thus treated, and out of three and a quarter millions of negroes, according to an impartial historian,[1] thus imported to various colonies in a century by Great Britain, 250,000 were thrown into the sea on the passage—one may well feel that this is the great crime of history, the one before which all others pale in enormity and wickedness. It would seem at first sight as if such gigantic injustices and cruelties could not possibly happen where Christianity had the slightest influence. As Montesquieu, with his characteristic irony, says: "Negroes could not be human beings, for if they were, the whole of Christendom would have united in a league to put down the African slave trade."

Worse still, the guilt of this great crime rests on the Christian Church as an organized body. It is true that many Popes thundered against slavery, and Church Councils proclaimed emancipation; but it is no less true that one fatal error of the Church stimulated the traffic in negroes and upheld slavery—the belief that the conversion of the stolen black would outweigh the sin of man-stealing or slavery. It is not true, though often repeated, that one of the most devoted followers of the Church and one of the most humane of men, Las Casas, first introduced negro

[1] Bancroft.

slavery into the New World. The importation had begun before his time under Charles V. He did indeed recommend the first large importation, in order to relieve his beloved Indians; but he lived bitterly to repent his mistake. His Church, however, supported by all its influence both the royal grants for purchasing negroes, and all the subsequent policy by which slavery was planted and perpetuated in Spanish America. The dark stain of African slave trade and of human bondage on a new continent is for ever on the garments of the Roman Catholic Church. It is a singular travesty on the "Religion of Love" that the Spanish government during two centuries concluded more than ten treaties in "the name of the most Holy Trinity" (el nombre del Santissima Trinidad), which authorized the sale of more than 500,000 human beings, and received from it a tax of over fifty million livres.

Nor does the Protestant Church escape. The first ship which sailed from England in 1562, under Sir John Hawkins, on the diabolical errand of buying human beings in Africa, and selling them in the West Indies, bore in a similar travesty the sacred name of *Jesus*. Henceforth for about a century and a half, a Protestant power—Great Britain—led in that most shameless traffic, —the plundering one continent of human beings to sell them as slaves in another. During all these years various English monarchs encouraged this trade. Elizabeth herself, the pillar of the Protestant Church, knighted Hawkins for his successes, and his crest became a manacled negro. Bishops and clergy favoured it; Parliament supported it by repeated resolutions and acts; the judges approved it, and even so distinguished a jurist as Lord Eldon had the presumption to say (in 1807) in parliament, "It (the slave trade) has been sanctioned by parliament, where sat jurisconsults the most wise, theologians the most enlightened, statesmen the most eminent."

It is true that the Protestant Church, as a Church, is not so guilty in the encouragement of the traffic as the Catholic, but on the other hand, its followers had less excuse. They did not profess to believe that "the end justified the means." They knew they were sinning against both God and man in their horrible trade.

The Slave Trade.—The first considerable cargo of slaves seems to have been brought in 1444, under Prince Henry of Portugal, by a Portuguese captain, from the coast of Guinea to the country near Lagos; they numbered 235. Other cargoes were brought, but the trade began to fall off, and would have undoubtedly ended but for the discovery of America. It is not known who was the person in whose mind the diabolical inspiration was first suggested, to supplant the weak race of the Indians in Hispaniola and on the main land by the vigorous African slaves. Charles V. had granted licenses for this trade to various persons before, in part at the suggestion of Las Casas, he granted a monopoly to Gov. de Bresa in 1517, to import 4,000 negroes during eight years into the Spanish colonies; this was renewed with a smaller number in 1523, but in 1542 the monopoly covered 23,000 slaves, and in 1542 2,000 were imported annually into Hispaniola alone. In 1551 licenses were offered for sale in Spain, giving authority to import 17,000 negro slaves. Slaves were first carried to St. Domingo in 1510, and to Cuba in 1521. Many treaties were made by the Spanish government with different companies to authorize this odious traffic; and, so far had the idea of a common humanity died out, that one Spanish treaty with a Portuguese Company of Guinea in 1700, stipulated to furnish

"10,000 tons[1] of negroes," and another between Great Britain and Spain stipulated to import 4,800 "Indian pieces" (piezas de Indias), as if they were pieces of merchandise. This was the notorious provision in the celebrated Treaty of Utrecht, which gave Great Britain as one of the prizes of a successful war, a monopoly in the slave trade for thirty years from 1713 to 1743; and during this period the British government agreed to import 144,000 negroes of both sexes into Spanish America at 33⅓ piastres per head.[2]

As we have said, the British slave trade began under Queen Elizabeth. In 1662, Charles II. granted an exclusive right to Queen Catharine and others to carry on the trade, they stipulating to supply the West India islands with 3,000 negroes annually. In 1695, the House of Commons resolved that "for the better supply of the plantations, all the subjects of Great Britain should have liberty to trade with Africa for negroes with such limits as Parliament should prescribe." Certain statutes of William declared that "the trade was highly beneficial and advantageous to the kingdom, and to the plantations and colonies thereunto belonging," and opened it to all. In 1708 the House of Commons declared by the report of a Committee, that "the trade was important and ought to be free and open to all the Queen's subjects trading to Great Britain." In 1729 the House of Commons resolved

[1] Dies mil toneladas de negros.

[2] "First then to procure by this means a mutual and reciprocal advantage to the subjects and sovereigns of both crowns, our British Majesty does offer and undertake for the persons whom she shall name and appoint, that they shall oblige and charge themselves with the West Indies of America, belonging to his Catholic majesty, in the said thirty years, . . . viz., 144,000 negroes, Piezas de Indias, in each of the said thirty years, etc." (Assiento Treaty between Great Britain and Spain, 1713.—*Coll. of Treaties*, 3, 375).

that the trade in slaves should be open to all, and that it ought not to be taxed for the support of the forts on the African coast which protected it, and that an appropriation ought to be made for the maintenance of such forts. Still other statutes under George II. (1749) declared the slave trade very advantageous to Great Britain, and necessary for the supplying the plantations and colonies with a sufficient number of negroes at reasonable rates. In a well-known case referred to the judges, Lord Chief Justice Holt and eight other judges showed how far the poison of the system had worked to neutralize Christianity, by declaring in a decision negroes to be merchandise. Previously to this, Charles II. had offered special inducements to emigrants to settle in the West Indies; among them, lands which should be cultivated by negroes. And not only did the British government seek in every way to encourage this iniquity, but it checked any beginnings of virtuous action in the colonies directed against the evil. Various acts of the American colonies protesting against the importation of slaves, or bills proposed for this purpose, were rejected by the British government—two in the year 1774 alone. It is but just to say, however, that the people of many of the colonies became soon as eager for forced labour, or for the gains in this bloody traffic, as the people of the mother country itself.

The treaty of Utrecht (1713) showed the utmost point to which this un-Christian spirit reached, and is probably the most disgraceful treaty (in so far as it touched the slave trade) in human annals. The English policy henceforth turned about this trade as a pivot.

Between Christmas, 1752, and the same day, 1762, it is estimated that 71,115 slaves were imported into Jamaica alone. Bancroft, the highest authority, estimates, as we stated before, that for one century previous to 1776,

3,250,000 negroes were torn from Africa by Great Britain alone, and exported to the English, Spanish, and French colonies, of whom 250,000 perished in the Atlantic. Helps,[1] also a careful writer, estimates that from 1519 to 1807 between five and six millions of negroes were carried from Africa by various European powers to the New World, and sold as slaves. In one year alone (1768) he states the importation to have been 97,000.

So gigantic a crime under the full light of modern Christianity is one of the most discouraging facts in history. The very foundation elements of Christ's teachings would forbid the least approach to the trade. The maxim "to love one's neighbour as one's self," must have belonged to another age and religion, when an English Bishop could sign the Treaty of Utrecht.[2]

The colonies, whether as more influenced by simple Christianity, or for other reasons, early (as we have said) protested against the slave trade. The great founder of Georgia, Oglethorpe, even went so far as to testify that they prohibited slavery in that colony, "because it is against the Gospel as well as against the fundamental law of England." "We refused as trustees to make a law permitting such a horrid crime" (Bancroft, vol. iii. p. 227). Within two years, however, the inhabitants petitioned for slaves.

There seem strong reasons to believe that slavery was encouraged in the British colonies, in order to make them more dependent on Great Britain. It is certain that before they became independent, in 1776, some 300,000 negro slaves had been introduced into them. So perverted was

[1] *Span. Conq.*, vol. iv. p. 371.

[2] John, Bishop of Bristol. It seems appropriate that the central slave market in the time of the Norman conquest should continue to be the centre of the African slave trade.

public opinion in England at this time, that a "Society for Propagating the Gospel in Foreign Lands," which had sent missionaries to the coast of Guinea to convert the negroes, was found to have owned plantations of slaves in the Barbadoes, and had not even thought it worth while to give Christian instruction to these victims of tyranny. That sect which has in many matters represented more purely than any other the principles of Christ, the Quakers, began their noble series of protests in Germantown (Pa.) in the latter part of the seventeenth century. They made a public declaration that,

"Though the negroes are black, we cannot conceive there is more liberty to have them slaves, than it is to have other white ones. There is a saying that we should do to all men like as we will be done by ourselves, making no difference of what generation, descent, or colour they are. . . . Ah! do consider well this thing if you would be done at this manner, and if done according to Christianity. . . . Truly we cannot do so, except you should inform us better thereof, namely, that Christians have liberty to practise these things. Pray what thing in the world can be done worse towards us than if men should rob or steal us away, and sell us as slaves to strange countries, separating husbands from their wives and children," etc. [1]

The poet Whittier [2] has well said,

"It was not the rigour of her northern winter, nor the unfriendly soil of Massachusetts, which discouraged the introduction of slavery during the first half-century of her existence as a colony. It was the recognition of the brotherhood of man in sin, suffering, and redemption; the awful responsibilities and eternal destinies of humanity; her hatred of wrong and tyranny, and her stern sense of justice which led her to impose upon the African slave trade the terrible penalty of the Mosaic code."

As early as 1675 the devoted missionary, John Eliot, presented a memorial to the government of Massachusetts

[1] Moore's *History of Slavery in Mass.*, p. 76.

[2] Whittier, quoted in *Wilson's History of the Slave Power*, vol. i. p. 7.

against selling captive Indians into slavery, on the ground that "it prolonged the war, hindered the enlargement of Christ's kingdom, and that the selling of souls is a dangerous merchandise." In 1688, the "Friends" of Pennsylvania protested publicly against slavery. In 1701 a petition against slavery was presented to the representatives of Boston, and in 1703 an attempt was made to hinder the odious traffic by imposing a duty of £4 on every slave introduced into Massachusetts. In 1716 the Quakers of New England sent a public letter to the Rhode Island Quarterly Meeting, with the following question:—"Whether it be agreeable to truth for the Friends to purchase slaves and keep them for a term of life." In 1729 the Philadelphia Yearly Meeting showed the action of Christian conscience by protesting publicly against buying slaves. At the same time Elihu Coleman wrote a pamphlet against slavery as "anti-Christian, and very much opposed to both grace and nature." During the latter part of the eighteenth century devoted members of the Quaker body laboured against slavery and strove to awaken Christians to the sin of slave-holding. Among these should be especially mentioned Benezet and John Woolman, in Pennsylvania. The great divines, Wesley and Whitefield, also preached against the slave trade. Among the Congregational divines, Dr. Hopkins of Rhode Island particularly distinguished himself by his efforts to break up slavery and the slave trade, until, in 1774, Rhode Island gave up the wicked traffic, and in 1784 abolished slavery. The Society of Friends was however the only religious body in America which, as a whole, forbade the holding of slaves. In 1773, Dr. Rush, one of the great opponents of slavery in Philadelphia, said very justly, "Future ages, when they read the accounts of the slave trade, if they do not regard them as fabulous, will be at a

loss which to condemn most, our folly or our guilt in abetting this direct violation of nature and religion."[1]

The earlier abolition societies in America in the eighteenth century all protested against this abuse on religious grounds, and the writings of the anti-slavery reformers of that day are full of their objections to the system, based on similar motives. "Nearly all," says the historian[2] of the slave power, "who engaged in the formation of anti-slavery societies were members of Christian Churches, and were taking an active part in the religious and missionary and philanthropic enterprizes of the day."

One of the celebrated protests against selling slaves came from Dr. Gordon in Massachusetts, in 1776. "If God," he says "hath made of one blood all races of men, I can see no reason why a black rather than a white man should be a slave."[3]

In 1774 the Quakers of Pennsylvania excluded from membership all who bought, sold, or kept negro slaves. So strong was the impression that the Christian religion freed a slave, that, as we stated previously, the Virginia assembly in 1667 was obliged to pass a resolution declaring that the act of baptism did not emancipate: this was renewed in 1705.[4]

Slave Trade in Great Britain.—In Great Britain, the earliest opposition to the slave trade and to slavery arose among religious men and was impelled by Christian motives. Among the prominent opponents of this abuse may be mentioned Baxter, Bishop Warburton, Paley, John Wesley, Bishop Porteous, Whitefield, and others. It is

[1] Quoted in *Wilson*, vol. i. p 13.
[2] *Wilson*, vol. i. p. 230.
[3] Moore's *History of Slavery*, p. 178.
[4] Anderson's *History of Col. Church*, vol. ii. p. 552; vol. iii. p. 227.

unfortunately true, however, that Whitefield subsequently permitted the introduction of slavery into Georgia. The first petition presented to Parliament against the slave trade (in 1776) was based on religious grounds: "that the slave trade is contrary to the laws of God and the rights of man." Previously to this, the Quakers, through George Fox, had made the following protest against the slave trade in the Barbadoes: "And therefore consider seriously of this, and do you for them and to them, as you would willingly have them or any others do unto you, were you in the like slavish condition, and bring them to know the Lord Christ." Again, in 1783, the Quakers presented to the House of Commons a like petition against the slave trade: "Your petitioners regret, that a nation professing the Christian faith should so far counteract the principles of humanity and justice as by the cruel treatment of this oppressed race, to fill their minds with prejudice against the mild and beneficent doctrines of the Gospel." A certain portion of English society was becoming gradually permeated with the opinion that both slavery and the slave trade were contrary to the principles of the Christian religion. The writings of those earnest men who did more than any others to abolish these terrible evils, are full of religious expression and feeling in regard to these wrongs Clarkson and Sharpe and Wilberforce always urge Christian motives against slavery. "If," says Clarkson, "we oppress the stranger as I have shown, and if by a knowledge of his heart we find he is a person of the same passions and feelings as ourselves, we are certainly breaking by the prosecution of the slave-trade that fundamental rule of Christianity which says, we shall not do that unto another which we wish should not be done to ourselves."[1]

The slave trade had brought to Great Britain, during the

[1] Clarkson's *History*, p. 246.

two centuries and more of its continuance, hundreds of millions of its ill-gotten wealth. It had been protected, as we have seen, by the most powerful interests. The struggle against it was commenced by a small band of Christian men who waged their war on this powerful system of injustice almost solely from motives of humanity and religion. Sixty years after the Treaty of Utrecht was signed, Wilberforce began (1773) to write against the slave trade. Clarkson followed in 1780. The struggle was long, bitter and severe. It was not till 1806-7 that the final victory was gained, and the slave trade was abolished in the British empire. The Congress of Vienna followed in 1815, by engaging the European powers "to use especial efforts to abolish the traffic reproved by the laws of religion and nature."

The United States had included their judgment on the slave trade in their constitution, but adjourned the final abolition till 1807. The example of Great Britain was followed by nearly all the civilized Powers,[1] and it is noted as an evidence of the advance of opinion that the slave trade has been condemned by three European congresses, a papal bull, twenty-six treaties and more than two hundred conventions with African sovereigns. England, as if feeling the enormity of her previous policy, has been indefatigable in her efforts to make the only redress possible, by breaking up the present traffic. She has made treaties, maintained cruisers on the coast of Africa, established consulates and commissions, and her officials have carried on an immense correspondence, organizing meetings, missions, voyages and protests without number, having for their sole object the breaking up of this detestable trade. There is certainly no public policy recorded

[1] Denmark even preceded her and abolished the slave trade in 1794, so far as it touched Danish ports, and in her colonies after 1804

in history of a higher and more disinterested nature or having more the stamp of true Christianity. Despite these efforts and those of other civilized powers, the traffic continued, and it is believed that as late as 1849, 50,000 slaves were imported into Brazil alone.

Many countries have even made slave trading piracy for their own citizens, but it is not as yet held piracy by international law; though no doubt in another generation, the public opinion of the world will thus stamp it.[1]

Slavery in the British Colonies.—The struggle in England against West India slavery was like that against the slave trade, throughout caused and urged on by motives of Christian philanthropy. It cannot be said that the English people or government had any material interest or profit in the abolition of slavery in their colonies. The whole proceeding seems an act of justice and humanity, and bears the stamp of religious influence. The writings and speeches of the reformers, the arguments presented to the people, the mottoes of the anti-slavery societies, the feelings expressed by the people, all prove that this great reform proceeded from religious and humane feelings, was caused by Christianity and urged especially from Christian motives. Colquhoun,[2] who writes with anything but a favourable spirit to revealed religion, confesses that "a religious delirium and morbid sentimentalism dictated this measure" (emancipation).

Under religious influences many ameliorating features had been introduced into the colonial slavery about the years 1823 and 1826. But the conscience of England had

[1] In full and just acknowledgment of the interests and principles of Christian philanthropy for the entire rooting out of this criminal trade, slave trading shall be punished like piracy. (Resolve of German Confederation, June 19th, 1845.)

[2] *Roman Civil Law*, vol. i. p. 420.

come to the conclusion, that the only right course with this evil was to utterly abolish it.

After a long struggle of the most embittered nature, in which the great statesmen of England sided in Parliament with the representatives of the religious sentiment of the nation, slavery was abolished (1833) throughout the British colonies at an immediate cost to the nation of £20,000,000 ($100,000,000) paid to the planters, and an estimated loss to the latter of £40,000,000 ($200,000,000) in the value of the slaves and the depreciated price of the lands.

This may certainly be looked upon as one of the greatest triumphs of Religion. The example of England was followed in 1846 by Sweden, in 1849 by Denmark, Uruguay, Wallachia and Tunis; in 1848 by France, and in 1855 by Portugal. A strong effort was made in 1880 in the Spanish Cortes to abolish the evil in Cuba, which it is believed will succeed. Slavery is also mainly done away with in Brazil—a law for gradual emancipation having been passed in 1871.

Slavery in the United States.—The opposition to this unjust system in both the Northern and Southern States, began very early from religious motives. Dr. Sewall, who is so prominent in the early history of Massachusetts in his opposition to both the traffic in slaves and the holding of them, draws his arguments especially from Christian doctrines. The Quakers opposed and at length entirely renounced slavery from religious grounds. Emancipation took place in the Northern States however from a combination of causes—the influence of climate, the competition of free labour, and the little profit of the system, as well as from conscientious motives. In the South, where at first there had been a deep moral opposition to the system, gradually, through its profitable returns, the pride of class which it nourished and the political power it conferred,

there came to be a strong conviction and even passion in its favour. As time went on the minds of thoughtful and otherwise good men in the Southern States, became completely perverted and led astray on this great moral evil. Such sophisms as excused the horrors of the slave trade to the early Spanish traders, blinded the intellects of great numbers who on all other matters were just and humane. The religious influences of American slavery were supposed to outweigh all the injustice of the system. Then the evils of freedom were believed by many to be greater than all those which fell to these ignorant creatures from bondage. They were said to be like children, unable to guide or support themselves without their masters. Moreover, there was the apparent practical difficulty of what to do with millions of slaves when they were emancipated; and the fear, bred of ignorance, that when freed, they would massacre their former masters, and commit the most savage atrocities. Emancipation was thus believed to mean,—poverty to the masters, perhaps servile war, and certainly the introduction of a vast element of ignorance, unassimilable by society, into the American body politic; and beyond this, the entire political humiliation of the South in the councils of the nation. Every practical inducement and interested motive seemed to work against emancipation at the South. The reformer who should advocate it apparently preached utter ruin to himself and his associates; he threatened the very existence of civil order; he consigned his bondsmen to unknown evils; he humbled and weakened politically that community which had become to him more than his nation—his State. The property which he would attack had come finally to hold a value of over *two thousand millions of dollars*. And he did all this, when his false religious advisers urged upon him that slavery was right, Christian and benevolent to the black.

Let none of us who have never been in these circumstances and have not felt these temptations, say too confidently that we could have kept the mind clear and have deliberately chosen the path of right and justice though it led to ruin and humiliation.

On the other hand, at the North, many circumstances combined to blind the eyes of just and God-fearing men. Thousands believed that their fathers had entered into a political compact which for ever forbade them from abolishing slavery in the Slave States by the power of the Federal government. Their hands were tied by solemn engagements. Under their view of the constitution, they did not hold themselves responsible for this system of injustice, where it was under State power. They could only bring about emancipation by breaking this compact, or by civil war. Jesuitical sophisms had also perverted the judgment of many. The negroes were under a Christian system of instruction; they were better off than as heathen in Africa; emancipation would mean the chaos of society at the South, and perhaps servile war. Moreover this enormous property-interest in the Southern States was connected by a thousand ties to the wealth and prosperity of the North. The greed of gain, even from this unjust source, stupefied the conscience of a large part of the religious community of the Free States. Again, as so often in history, the organized Church, in many of its branches, became arrayed against true Christianity. Many of the nominally religious bodies of the country became pro-slavery, and therefore false to the teachings of Christ.

The opinion of the Presbyterian Synod in the United States is given as early as 1787, in favour of universal liberty and of constant preparation by the masters for emancipation, by providing education for the slaves, and by granting them a small property of their own, and finally

they "recommended it to all their people to use the most prudent measures, consistent with the interests and the state of civil society in the countries where they live, to procure eventually the final abolition of slavery in America."[1]

Again this advice is repeated in 1815; and in 1818, the General Assembly venture to say that slavery is a gross violation of the most precious and sacred rights of human nature; "utterly inconsistent with the law of God, which requires us to love our neighbour as ourselves, and totally irreconcilable with the spirit and principles of Christ."[2] They then adopted a declaration, which was repeatedly reaffirmed by subsequent assemblies, that "it is manifestly the duty of all Christians who enjoy the light of the present day, to use their honest, earnest and unwearied endeavours, as speedily as possible, to efface this blot on our holy religion, and obtain the complete abolition of slavery throughout Christendom."[3]

The Congregationalists, Unitarians and other sects were in their early history even more opposed to slavery, both in their formal resolutions and in their practical action. The Methodist Episcopal Church, in an early conference (1780) plainly condemned the system of human bondage; but, as with many of the sects in the United States, the corrupting influences of the system gradually penetrated the Church and weakened its moral force. In 1800, the Annual Conference was directed to draw up an address for the gradual emancipation of the slaves, to such legislatures as had passed no laws on this subject. By a subsequent action, however, this and other similar paragraphs were struck out, and the following words were added (1804):

[1] *Digest of Records of the General Assembly of the Presb. Church*, p. 338.
[2] *Ibid.*, p. 342.
[3] *Ibid.*, p. 342.

"Let all our preachers, from time to time as occasion serves, admonish and exhort all slaves to render due respect and obedience to the commands and interests of their respective masters."[1]

It is from 1830 to 1850 that the so-called "Church of Christ" in the United States was, in many of its branches, especially false to His principles as regards justice and benevolence to our fellow-men. This was true not only of the public action of many religious bodies, but of the private views and arguments of individual leaders of the Church in all sects, both Roman Catholic and Protestant. Many sophistical arguments were put forth by Northern religious men to prove the right of slavery; and the Churches were exceedingly timid in hearing or pleading the cause of the oppressed. A distinguished Presbyterian divine, Dr. Albert Barnes, said in a well known address, "There is no power out of the Church that could sustain slavery an hour if it were not sustained in it."[2]

Even the Quakers, in this hour of trial, were often found inconsistent with the doctrines their predecessors had so consistently taught, and gave little encouragement to movements for emancipation.[3] It is stated that only certain small sects, such as the Free Will Baptists and Old School Covenanters, were always and consistently opposed to slavery.[4] Individual Churches, however, in all sects were true to the spirit of their Master—especially among Congregationalists and Unitarians.

In the meantime, the profound principles of Christianity were working on such minds as Garrison's, Lovejoy's, Phillips', Johnson's and others, and producing in them the intense conviction, that the slave was a brother, that

[1] Bowen's *Methodist Episcopal Church and Slavery*, p. 24.
[2] Johnson's *Garrison*, p. 248.
[3] *Ibid.*
[4] *Ibid.*

for him Christ had lived and died, and we were bound to do to him as we would have others do to us in like condition, and that no compact or constitution could hold which permitted such an atrocious injustice as American slavery. It is true that subsequently the false position of a large part of the American Church on this question forced many of the early abolitionists to an apparent opposition to religion; it was only however an asserting of the real character of Christianity against those who had falsified it.

Garrison at an early period said, "Emancipation must be the work of Christianity and the Church. They must achieve the elevation of the blacks and place them on the equality of the Gospels."[1] And again in an impassioned passage, the great emancipator exclaims, "I call upon the spirits of the just made perfect in heaven, upon all who have experienced the love of God in their souls here below, upon the Christian converts in India and the isles of the sea, to sustain one in the assertion, that there is power enough in the religion of Jesus Christ to melt down the most stubborn prejudices, to overthrow the highest wall of partition, to break the strongest caste, to improve and elevate the most degraded and to equalize all its recipients."[2]

No one who knew anything of the anti-slavery reformers in the United States, will doubt that their career was begun and carried on under the purest influence of Christ's truths. It was these and similar men and women who founded, in 1833, the American Anti-Slavery Society.

But beyond them was a great host of religious men and women in all sects, who felt the deepest opposition to slavery from humane and religious grounds. They conscientiously believed their hands tied by a political compact; they did not hold themselves responsible for the existence of slavery in the Southern States; but they were

[1] *Johnson*, p. 68. [2] *Ibid.*, p. 106. Words spoken in 1832.

unalterably opposed to its extension or to any increase of its power. From this great body, the prayer for emancipation went up by night and day; they scattered innumerable documents, and furnished speakers and arguments against the system; they did their utmost to hem the slave power within fixed boundaries; they poured free labour over the new territories, and from them were organized the great party which started, with all the enthusiasm of a moral reform, its triumphant opposition to the extension of the slave power and finally to its very existence.[1]

The natural effect and tendency of slavery at the South tended more and more to awaken the Northern conscience. The increasing cruelty of the masters; the laws against instruction of the negroes; the breeding of slaves for the market, and the separation of families; the violence and arrogance of the slaveholders, and beyond all other things, the pursuing of fugitive bondmen on free territory, aroused each day a deeper hostility to this organized injustice among even the most cautious of the citizens of the Free States. When slaves were sold under the shadow of the

[1] In an interesting sketch of the struggle which prevented Illinois in 1823 from becoming a Slave State, the *Life of Gov. Coles*, the biographer (Mr. Washburne), says, "the press teemed with publications on the subject. The stump-orators were invoked, and the pulpit thundered anathemas against the introduction of slavery. The religious community coupled freedom and Christianity together, which was one of the most powerful levers used in the contest." At one meeting of the Friends of Freedom in St. Clair county, more than thirty preachers of the Gospel attended and opposed the introduction of slavery into the State.*

"It may be said to the eternal honour of the clergy of Illinois at that day, that they were almost without exception opposed to the Convention (which favoured the making it a Slave State), and that they exerted great influence in securing the rejection of the Convention proposition at the polls" (p. 171).

* *Sketch of Gov. Coles*, p. 136.

Capitol of the United States, and when government troops conducted a chained runaway through Boston to his master, the most conservative felt that no American citizen could escape a certain responsibility for the existence of slavery; and a deep and burning indignation was kindled in many minds that such a shame and tyranny could exist under the republic.

In all great reforms and changes, there are many forces that bring about the final result. The wrath of man as well as the love of God, mingle often in the ultimate abolition of human ills. It was the anti-slavery feeling, begotten of Christianity, which prepared the minds of the great intelligent masses of the Free States for their final struggle with the slave power. And no reasonable objector should belittle this motive, because these very men were held back from forcible opposition to slavery by a loyal conviction of their obligations under the constitution. They saw that to strike directly at the slave power meant revolution and civil war. Considering the probable fearful nature of such a conflict and the uncertainty of its issue, they do not deserve reproach that they waited for the other side to give the first blow.

And then, beginning the difficult struggle with a large element of the population in sympathy with the slave-masters, it may be excused that these doubting ones were attracted by other cries, than those of anti-slavery. The government, too, kept its old traditions, and still feared to avow, what was the great impelling power of the Northern uprising—its hostility to slavery. American statesmen in their proclamations and public despatches, even made light of the objects of the struggle, and seldom professed the moral enthusiasm which fired the thousands of individuals who pressed forward to the ranks. But those who knew the people at this time, knew that in every

company and regiment enlisting for the war, there were men animated with an unquenchable enthusiasm for liberty and hatred of slavery. They loved the Union indeed, but they loved it as the ideal of liberty for all men of all races. A moral fervour burned through all classes of men at the North. The first regiments came from the most anti-slavery districts of the most religious communities. Many of the leaders were avowed abolitionists. The popular songs breathed the spirit of emancipation. A thousand pulpits pleaded the cause of the negro and denounced slavery. The feeling had stamped itself deep into the heart of the Northern people, that slavery, as a great wrong and injustice, would injure the white and the whole country equally with the negro, and was against the laws of Providence.

Innumerable other feelings and motives mingled in the spirit which opened and sustained the war: love of the Union, pugnacity, the hostility of a free-labour class to a slaveholding class, political sympathy and a careful weighing of the chances of the future if a slaveholding republic were allowed unlimited sway side by side with a free republic. But deeper than all these, among the religious bodies, and in every class, was an intense moral opposition to slavery, and a determination now that hands were unbound as to the compacts of the constitution, to get rid of it once and for ever.

The mere pecuniary and commercial interest of the Free States was undoubtedly to leave the *status quo*, to enjoy the indirect profits of slave-labour, and not suddenly to destroy two thousand millions worth of apparent property in a portion of the republic. The moral forces, as well as enlightened policy, prevailed.

It is true that emancipation was at length declared as a "war-measure." But the way was prepared for it by

the moral opposition to slavery as a wrong and injustice.

The whole population of the Free States had been educated by events as to the real character of the system, and conscience and religious sentiment had been enlightened by what seemed the revelation of Providence itself. In such vast social reforms as the abolition of American slavery, many influences must combine with the purely moral and religious. Christianity acts merely as stimulating the conscience, increasing human sympathy, and awakening the mind to the horror and injustice of such an oppression of a fellow-man. It does not show the way to revolution, though indirectly it does often "bring a sword into the world." But it works upon the most tremendous motive-power in human affairs—the conscience and sympathy, and under it, convulsions must come; until finally men approach in institutions and laws its divine principles.

Without the passion and rashness of the South, it is difficult to see how emancipation would have come for centuries. There might have been two republics indeed, but one would have been slaveholding. Still ultimately in the far future, after untold horrors, and convulsions and wars, freedom would have dawned on the American continent also, for "where the Spirit of Christ is, there is liberty."

CHAPTER XXIX.

MODERN SERFDOM.

THE history of serfdom and emancipation in the Middle Ages virtually includes the similar history in modern times.

This relic of a barbarous period reached down to a more civilized era. The oppression and exactions of serfdom in every country of Europe, except Norway and Sweden, have weighed down and degraded the labouring class, crippled their producing power, and in many states, prepared the way for the outbreaks which accompanied or followed the French Revolution. The ignorance and degradation of a large part of the European peasantry in this century are due most of all to serfdom. Even as late as 1750 (it is stated by careful writers)[1] more than one-half of the German people were in the state of serfdom. The profound moral and religious forces which gradually change such a system of injustice as this, are not easily recognised. The most powerful influences working to the overthrow of serfdom were the silent.

Throughout the eighteenth century, the press in Europe became imbued with humane and religious ideas, and thundered incessantly against this ancient injustice.

The philosophers, who often, while deriding religion,

[1] Sugenheim. Zimmerman.

showed the purest Christian spirit, constantly protested against this wrong. Men's minds became everywhere stamped with the ideas of equality of rights for all, and of humanity toward the weak. The incredible burdens and exactions of serfdom in France, Germany, Italy, Spain and other countries, were felt to be violations of Christian and humane obligations. Here and there prominent acts of emancipation by individual masters betray the deep impulses at work.

Thus a certain Count Rantzan in Holstein, in 1766, published a pamphlet, giving his own experience in freeing his serfs, which was afterwards circulated as a document of emancipation in Russia, and is believed to have had much effect there. This owner of serfs gives a powerful picture of the hopelessness, degradation and irreligion of his bondmen; how they had no heart in their labours, no courage and no hope; and how they even became indifferent to the strongest impulses of human nature, and did not care for marriage or to leave descendants who should inherit such misery. "This condition (of serfdom)," says the Count, "naturally extinguished all moral good in them; one observed in them a beastly cold-bloodedness towards God and religion.[1]

In various countries, the sovereigns were sufficiently in advance of their times to press emancipation on an unwilling nobility and gentry; in others, the storms of revolution swept away the last relics of feudal oppression. But in almost all, the ideas and principles derived from religion had prepared men's minds for removing the heavy burdens on the poor.

One of the earliest royal ordinances against serfdom in modern times was from Frederick I. of Prussia (1702), doing away with it on the royal domains; this, however

[1] *Sugenheim*, p. 517.

was withdrawn in 1711. Frederick II. attempted to renew the injunction in 1719, especially on the royal territory in Prussian Pomerania. These efforts were followed by those of Frederick the Great (1763), but they all failed, though the oppression was much softened in the Polish provinces.

In France, an edict of Louis XVI. proclaims (1779) that, "considering that a great number of our subjects are still servilely attached to the soil, and regarded as making part of it,[1] they shall be free on the royal domain." Yet, nothing but the explosion of the revolution broke up the exactions and burdens of ages, and freed France from this injustice. Previous to this, in North Italy the princes had abolished these ancient oppressions of the people, Victor Amadeus of Savoy having abolished forced labour in 1729, and removed all similar burdens in Sardinia in 1761. In Germany, it was in this century before the various oppressions of serfdom were done away with. As usual, the revolutions bore in their train emancipation from feudalism. The outbreak of 1830 was followed by freedom to the poor peasant in Hanover (1831), in Saxony and Bavaria (1832), and Würtemburg (1836). The Revolution of 1848 was followed by entire liberty in Prussia (1850) from feudal burdens, though serfdom had been abolished forty years before; and by the utter doing away with forced labour and service among the peasants by the Magyar nobility (1849) in Hungary. In Austria, the Imperial house had done much for the serfs through different reigns, but serfdom was not ended in Gallicia till 1782; and all traces of feudalism were not swept away till this century.

This abuse in some of its forms survived in Denmark till 1835, and in Switzerland till 1846.

[1] *Sugenheim.*

In Russia, as is well known, serfdom survived till 1861. It is probable that in this latter country, and in Hungary, the religious impulse had less share in emancipation than it has had in the rest of Europe. Still both countries felt the current of the age, which has been strongly directed by the ideals presented in the Gospels. The conception of man as a "a brother in Christ," and one for whom He has died, always tends to shake down tyranny and undermine injustice. As Religion spreads abroad the ideas of human brotherhood, equality before God, responsibility to Him and liberty, the ancient systems of injustice are brought to the ground, and Freedom and Justice begin to rule and prevail.

CHAPTER XXX.

THE DUEL.

THE progress which has been made in Christianized opinion in regard to this custom, may be best measured by the views of one of the most acute philosophical writers on law in modern times; an author, too, who considered all these subjects (so far as his training permitted), uninfluenced by Christian traditions. Bentham, in his "Principles of Penal Law"; says of the duel: "It entirely effaces the stain which an insult imprints upon honour." He then praises courage, justly, as one of the highest qualities of the citizen, and regards it as especially tested by this mode of trial,

"In the state of neglect," he adds, "in which the laws till the present time have left the honour of the citizens, he who endures an insult without having recourse to the satisfaction which public opinion prescribed to him, by thus acting exhibits himself as reduced to a state of humiliating dependence, and exposed to receive an indefinite series of affronts; he exhibits himself as devoid of the sentiment of courage which produces general security, and, indeed, as void of sensibility to reputation,—sensibility, protection of all the virtues and safeguard against all the vices."

Or again,

"Duelling is a preservative of politeness and peace—the fear of

[1] *Bentham's Works*, vol. i. p. 380. There is reason to think from a letter of Bentham to the Duke of Wellington, that he modified these views in later life.

being obliged to give or receive a challenge, destroys a quarrel in the germ."

"If the legislator had always applied a proper system of satisfaction for offences, there would have been no duelling, which has been and is still but a supplement to the insufficiency of the laws."

The Christian system, it need not be said in reply, differs *in toto* from the modern theory of "honour," as it does from the spirit which supports war. It requires the believer indeed to scrupulously regard the opinion of the just and honourable, and to avoid even the appearance of evil; but its standard is not reputation, even that of the highest and most civilized persons, but character, and character continually tested by Christ. Its "sensibility" is constantly called out, not towards a public opinion which ever changes, but towards the supposed approval of the purest moral character which history has known. Bentham's argument at this late day hardly seems worth replying to. A devout Christian of his time would have said: "We hope through the gradual influences of the Christian religion and right reason, to change the public opinion of all civilized states, so that the politeness and peace of which you speak will be the national outflow of improved morals and manners, and not the effect of fear or prudence; so that affronts will not be so often offered, or will not be so much felt, or will be punished by law and public reprobation. We hold that courage may be tested in far more sensible and useful ways than in personal combat; and that the duel settles nothing, and cannot affect in one way or the other the reputation assailed. We hold that a nobler courage may be shown by refusing a challenge than accepting it; and that the Christian has a higher standard to measure himself by than a changing public opinion, inherited from barbaric times, which often approves selfish and base actions. We trust to change

both opinion and law, so that duelling will become considered as a relic of barbarism, as it is known to be contrary to the spirit of the Christian religion."

The struggle, however, between the spirit of this Faith and this custom has been an exceedingly slow and doubtful one for the past three centuries. In this matter, the Church has been indeed more consistent with the teachings of the Master than in any other. The Church as well as Christianity has nearly always opposed the duel of revenge, or that fought on account of wounded honour.

The Council of Toledo (1477) made a solemn declaration that Christian burial should be refused to duellists. Pope Julius II. (1509) issued a bull, prohibiting the duel on pain of excommunication, and Leo X. (1519) threatened the same punishment to all witnesses, seconds, or abettors of the offence. Pius V. extended the prohibition to all Christendom. The celebrated Council of Trent gave forth no uncertain sound on this custom. All duellists were threatened with excommunication and loss of Christian burial, and the duel was called "an invention of the devil to ruin the soul, by the bloody death of the body." Gregory XIII. (1582) also issued a bull, threatening terrible spiritual penalties on all duellists, and Clement V. extended the punishment to all seconds and abettors; and as late as 1752, Benedict XIV. proclaims a refusal of Christian burial even to those who died away from the field of contest, but through the effects of the duel.

The Protestant and Catholic Church has each been equally opposed to it during all their history. The books of religious instruction, and the volumes of sermons, in all Christian countries, are full of arguments and appeals against the practice. And yet it was late in this century before Christian influences produced much effect.

The "duel of honour" is to be distinguished from the

"judicial duel" of the Middle Ages. It is an off-shoot of chivalry, and especially made its appearance in France in the sixteenth century in the reign of Francis I. It represented the exaggerated sensitiveness of a class to any slight affecting its reputation, which was an especial feature of chivalry and feudalism. Reversing the rule of the Roman law,[1] the modern gentleman felt the light blow of a stick or the hand on the face as a greater insult than a stroke by a deadly weapon, because the peasants and villains alone fought with sticks and fists, and with uncovered faces. The lie was the highest insult, because this was the common reproach or accusation made against the slave, the villain, or the peasant.

The duel became the badge or sign of a class: and the chivalric habit of a barbaric age of fighting in the cause of the weak or for any wound of honour or the most trifling reason, became transferred to a more enlightened time, and was the mode of showing membership in an undefined body, of restraining rudeness and satisfying enmity. It is the "survival" of barbarism in a civilized age.

So rife did the practice become in France, that during the eighteen years of the reign of Henry IV., four thousand French gentlemen are said to have perished in the duel, and this good-natured king is reported to have granted 14,000 pardons to those who had offended against the law in this matter. From his reign to 1757, no less than twelve royal ordinances and eight acts were published against duelling, and yet as late as the minority of Louis XIV. three hundred of the first nobles of France perished by this practice.

Duels were almost equally common in England and Ireland. In the reign of George III. there were, according

[1] Ictus fustium infamiam non importat. (De his qui infamia, etc.)

to Gilchrist, one hundred and seventy-two duels, in which one-fifth of the combatants were killed, and one-half received wounds; only eighteen of these were tried (though the statute books are full of laws against the practice), of whom six were acquitted, seven were found guilty of manslaughter, three of murder, two were executed, and eight sentenced to imprisonment. Every state in Europe has legislated against duelling, and in many armies, an officer is cashiered who takes part in a duel. "Courts of Honour" have been formed in various countries to take jurisdiction of offences against honour. Yet duelling still continues in France, and to a limited degree in Germany. Even so celebrated a general and old a soldier as the Duke of Wellington, after all his victories, felt it necessary to fight a duel as late as 1829; and a duel between Englishmen in England was fought as late as 1845, while one occurred in England between Frenchmen in 1852.[1]

As late as 1841, an address was presented to the House of Lords, in relation to a particular duel, and protesting against this barbaric custom, and obviously under the impression that public feeling among the higher classes was very much in its favour.

"*If society*," say the petitioners, "*is to be preserved, it must be christianized.* Your lordships have acknowledged this great truth by your exertions to preserve the Christian principle in education. . . . But it would be mockery to hold forth the Decalogue with one hand, and with the other, a Charter of legitimacy to that spurious offspring of human vice and folly, which, involving as it does a direct transgression not of one only but almost every law in the Decalogue, virtually annuls it. . . . We call upon your lordships therefore in the name of God and man . . . to accompany your verdict with

[1] It is reported that in the same year a trial occurred in England for slander, between two English Naval Officers, which would have been settled earlier by duel.

the fearless and unqualified expression of your united abhorrence of the unhallowed system of duelling." [1]

A duel occurred in England in 1843, which gave rise to the "Anti-duelling Association," and was followed by an order of the Queen through the War-office in 1844. This order [2] has perhaps broken up duelling in the British army, though previous experience shows that such orders are successful only when they are the voice of public opinion. By this regulation, an officer engaging in a duel is cashiered and his second punished. In the third article, approbation is expressed of

"The conduct of those who having had the misfortune to give offence to or injure or insult others, shall frankly explain, apologize, or offer redress for the same, or who, having received offence, shall cordially accept frank explanation or apology for the same; . . . and lastly, all officers and soldiers are acquitted of disgrace or disadvantage, who, being willing to make or accept such redress, refuse to accept challenges," etc.

This certainly is at length the voice of Christianity speaking through governmental regulation and military law.

In the United States, the duel has been so common, that a modern English historian of duelling, Dr. Millingen,[3] writing in 1841, says, with suitable modesty, he is confident from the progress already made, that within half a century, duels will become as rare in the United States as in Great Britain, if not rarer. In its early history, the Republic lost the greatest statesman it has ever possessed —Alexander Hamilton—in a duel with a worthless adventurer who was determined [4] to murder him, and when

[1] *The Times*, Feb. 11th, 1841.

[2] Quoted in Steinmetz's *Romance of Duelling*, vol. ii. p. 366.

[3] *History of Duelling*, vol. i. p. 179.

[4] Bentham, on hearing from Burr's lips the account of this duel said, "it was nothing less than murder." See *Bentham's Works*, vol. xi

Hamilton, disapproving the practice, fired into the air. The feeling throughout the country at this useless sacrifice, aided much in breaking up the practice in the Free States. The savage influence of the slave system kept it up for many years, especially in Washington, where the members from Free and Slave States met in bitter discussion. It was, however, a Southern statesman—Gen. Pinckney, of South Carolina—who, after Hamilton's death, addressed in 1804 a celebrated memorial against duelling to the Senate and House of Assembly of South Carolina.

"Your memorialists," he says, "are deeply impressed with grief at the prevalence of the custom of duelling, which trampling on all laws, human and divine, sweeps off many useful citizens, leaving the families a prey to sorrow, and often to poverty and vice. That this custom originated in dark and barbarous ages, when a regular and impartial administration of justice was unknown and unpractised, etc. That restraining personal resentments by giving the attribute of vengeance to the laws, was the greatest victory obtained by civilization over barbarism, but the custom of duelling is too well calculated to defeat the beneficent effects of that triumph, and to weaken the effect of all laws, etc. That the pretence of those who would excuse this custom on the ground that it polishes society and prevents assassination, is wholly unfounded; . . . a custom, which though in direct hostility of the principles of Christianity, prevails only in Christian Europe and America."

Again still later (in 1838) it was a Southerner, Henry Clay, who in a debate on a bill to prohibit duelling in the District of Columbia, said, as the last word in the debate, "When public opinion is renovated and chastened by religion, reason and humanity, the practice of duelling will be at once discountenanced."

This bill, it should be remarked, passed with only a single vote in the negative. So in every State, strict laws were passed against duelling, and provisions against it included in the constitution of many even of the Slave States. The rules and regulations governing the United

States army strictly forbade it. But all this was of no avail. Public opinion even in the North for a long time upheld it; and in the South, the influence of slavery and the society based upon it, preserved the custom till within a very few years. The gradual permeation of the people by Christian ideas and by right reason, has finally utterly done away with duelling in the Free States; while the same causes with the destruction of a slave oligarchy at the South, have gradually uprooted it there. It is not found in practice that the abolition of duelling, as was so freely predicted, has increased assassination or cases of bodily attacks; nor does it make language in political debates more personal or violent. Politeness of manner through the Union is even more common than in the times when challenges were so customary. Political debates are no more abusive, and on the whole, less so, than under the duelling régime. Instances of personal violence and murderous conflict are more rare in all the States. The press, often vituperative enough, is not as bad as it was when a scandalous article brought after it a challenge. The whole country has been much softened by religion and the progress of civilization. Courage has been sufficiently tested in the awful ordeal of civil war. Public opinion has been elevated and Christianized. Laws express the higher feeling on this subject, and are executed. The duel, as will be in some distant day with war, is simply regarded as a relic of a barbarous age and will soon utterly pass out of use or observance.

CHAPTER XXXI.

PRISON REFORM AND CHARITIES.

IT is certainly one of the marked steps in humane progress among civilized nations, that the convict and prisoner for crime or transgression is no longer merely left to his punishment, or treated with brutality and unnecessary cruelty. There is scarcely a trace in the ancient world of any important attempt to reform the offender against human law or to render his confinement less miserable. It was seldom remembered that many offenders are only technical violators of human legislation, and that many others are led into crime by the entire neglect of their education by the community.

Prison reform began under Christian influences, as we have previously shown, during the reign of the first (nominally) Christian Emperor of Rome. Constantine's legislation (320 A.D.) thus provides for improvement in the treatment of convicts. Those accused of crimes are to be examined with promptness and not to be detained in confinement, while those arrested are to be confined in a humane manner. The cells are to be furnished with means for air and light. Persons under accusation are not to be put in jails or scourged, but are to be placed under "military arrest" and in a prison open to the light.[1]

In 340 a law forbade the mingling of sexes in prison.[2]

[1] *Cod. Theod*, lib. ix. tit. 4. [2] *Ibid.*, tit. 1.

The Emperor Honorius charged the judges to visit the prisons every Sunday, to see that the prisoners received sufficient nourishment and to take care that proper humanity be shown the convicts by the jailers.[1]

In 549 the Council of Clermont orders the prisons to be visited every Sunday by the archdeacon or some other church official, to provide for the wants of the prisoners.

The great reform of European prisons commenced by Howard, is most clearly a fruit of the teachings of the "Friend of man." Every line of the private journals of this devoted philanthropist, his dying words and prayers, show the religious inspiration which prompted his efforts. "Do Thou, O Lord!" says this friend of the unfortunate, a little before his death, "visit the prisoners and captives and manifest Thy strength in my weakness. Help, Almighty God! for in Thee do I put my trust, for Thou art my rock."[2]

A biographer says of him: "The mid-day sun is not more evidently the cause of light and warmth and fruitfulness, than that Christian love which animated, induced and constrained Howard to consecrate himself entirely to God's service, and to sacrifice life rather than that fellow-men should suffer whom he might assist and relieve."[3]

The great reforms of this century in the treatment of convicts and prisoners; the individual moral influences, the stimulus introduced of hope and a kind of moral probation within prison walls, the grading and separation of prisoners, the introduction of schools, libraries and the services of religion to those under the sentence of the law,

[1] *Cod. Theod.*, lib. xi. tit. 27.
[2] *Life of Howard* (Field's), p. 4.
[3] *Ibid.*, p. 65.

the gradual avoidance of degrading and useless penalties, the employment of more humane and conscientious prison officers, the use of reformatory as well as deterrent measures in the treatment of offenders, in fine, the best features of the "Irish" prison system—all these are the clear and natural fruits of Christian teachings. We know of no similar influence among those sentenced by law or of similar effects under any other religious system. To the modern believer as well as to the ancient, Christ still goes down among the weary and heavy-laden, the prisoner and captive, and attempts to lift the heavy burdens, and the true follower seeks to walk in His footsteps. The great conventions of prison reformers and those who would elevate and improve the lot of convicts and prisoners, held in all civilized countries, are only another appropriate expression of human sympathy under the inspiration of the "Teacher of Galilee."

The immense reforms in the prison system of the United States are a striking feature of the times. We read in American colonial history that a preacher in the principal Philadelphia prison was obliged to be supported by a cannon with a lighted match at hand; that the Connecticut prisoners were kept in one place[1] in underground cells dripping with moisture, where the light of day never penetrated, and where vice and riot prevailed; that in the leading city, New York, old and young, male and female, sane and insane, innocent and criminal, were confined in jails together; that drunkenness, debauchery, profanity and rioting ruled in these places, so that all prisons and jails became schools of crime. Neither hope nor religion ever entered these abodes of misery.

It was the Christian spirit that inspired the first great effort in the United States to save the youthful criminal,

[1] The Simsbury mine.

in founding in 1824 the first American Reformatory—the New York House of Refuge. The same inspiration has gradually lightened the fate of the prisoner and sought to reform him, until, in 1874, the following were some of the practical fruits of this great influence among the reformatories of the United States.

There were, in 1874, in twenty States and one Territory, thirty-four reformatories for youthful criminals; they owned in the aggregate 6,153 acres of land; the total estimated value of buildings and land, with the personal property, was $7,826,480; the average number of inmates was 8,924, and the whole number received since their opening was 91,402, of whom 77,678 were boys and 13,724 girls; the whole number of persons engaged in this work was 771, and the total annual cost for maintenance was $1,358,885, or $152, (about £30) for each inmate. Three-fourths of the inmates, or nearly seventy thousand, are reported as permanently reformed. These figures, however, are to be received with great caution, as there is no accurate tabulating of the results.

Educational Charities.—It may be urged that the sympathy with the prisoner is indeed humane, and a mark of progress in compassionate feeling, but that it does not necessarily advance mankind or prevent crime in the future. In all countries, and especially in the United States, have arisen, however, movements of Christian philanthropy directly inspired by the "Friend of man," having for their objects to root out criminality and pauperism in the germ and prevent the formation of criminal classes. We allude to the educational charities for children, especially in the large cities like New York. This is a feature of moral advancement unknown to antiquity and scarcely heard of except where Christian teaching has reached.

These charities take the homeless and unfortunate victim of poverty or vice—the child: they provide him shelter and protection while cultivating his self-help; they find him labour, give him education, put him under the best habits of civilization, throw around him religious influences, and at length place him in a compassionate family on a farm where he can work in the ground.

If a girl, devoted women of the fortunate classes seek to lead her to better things. The habits in which she has lived are met by influences of industry, order and purity; she is improved day by day, until at length she too is transplanted to a good home.

The agencies through which these influences are conveyed, the lodging-house, industrial school, emigration plan, and the like are skilfully contrived to elevate the class through natural means. It is not surprising that after twenty-five years[1] of these charities the prison statistics of New York should show distinct and encouraging evidences of the diminution of juvenile crime and vagrancy against many local evils and obstacles, and that fifty thousand children are reported as rescued from the vice and misery of New York and turned into self-supporting and industrious farmers and housekeepers.

These and similar movements throughout England and the United States are a plain and natural fruit of Christianity. They are inspired by Him who bore the burdens of men and was especially the Friend of the poor. There seems no reason why, under the same impulse, they should not increase and become one of the great curative movements of society to remedy its most threatening evils.

It is almost a common place to say that all the varied and blessed institutions of charity throughout Christendom, all the asylums, hospitals and reformatories, the provisions

[1] See *The Dangerous Classes of New York*, by the Author.

for the lame, blind and deaf, for the idiot and insane, for the sick of every possible disease, for the widow and orphan and homeless, for the aged and infirm, are only blossoms and fruit of the life and teachings and death of the great Benefactor. They are the true victories of Christ —the *Gesta Christi.*

To these must be added a more humble but not less significant expression of sympathy in modern society, the efforts to care for the dumb animals, those patient instruments of man's convenience; to alleviate their inevitable sufferings, to restrain the tyranny of their masters, and to prevent any unnecessary pain.

Many societies have been formed in the United States and other countries to prevent cruelty to animals and to check any useless suffering in scientific operations with them. There is little doubt that these compassionate efforts, which find their strongest support among women, have made the lot of dumb brutes much more endurable in many civilized countries.

They are not, however, peculiar to the followers of Christianity. The Buddhists have often been equally merciful, and in some Oriental countries great sympathy for animals seems consistent with great indifference to human suffering.[1]

Humanization of Punishments.—One remarkable advance in humanity, due to religious forces, should not be passed over—the gradual mitigation of severe and "afflictive" punishments to those sentenced by the law, and the doing away with degrading penalties, We do not regard the Christian system as necessarily opposed to the death punishment in all cases, but as aiming to limit it to only

[1] See passage quoted, Chapter XXXVI. page 447, of a traveller's experience in India.

the most extreme instances of crime. Nor are the Christian teachings responsible for any of the false sentiment of the modern world towards those guilty of crime. The teachings of Christ and the apostles evidently do not look upon death as the greatest of evils; nor do they discourage severe penalties on wrong-doers. There is no direct instruction in regard to the death penalty any more than on a thousand similar topics. The inference from the teachings might fairly be, that so valuable a thing as human life, with the tremendous destinies of the soul, must be very carefully and reverently dealt with, not sacrificed except for the very highest interests of the community, and that humanity towards even the most guilty must guide human actions. It is certainly possible that under these principles the punishment by death will gradually pass away, as have the *strappado* and the rack.

The natural effect of these teachings, however, from the beginning was against any degrading penalties. Even the laws of Constantine show this, where they forbid any marring of the beauty and dignity of the human face made in the Divine image.[1]

They equally oppose any penalty which brutalizes the offender or the spectator. The criminal may deserve severe pains and punishment, but this Faith would encourage no penalty which in its nature makes him worse, or which in its natural effect degrades the on-lookers and society in general. It does not object to the offender suffering pain and loss, but this must be of a nature to reform him and benefit others. The penalty must not be useless, or degrading, or crushing, or brutalizing to the world. The prison administration is to be guided by love and severity combined.

[1] *Cod. Theod.*, lib ix. tit. 40; 1, 2.

The progress in this matter has been remarkable in the modern ages. In the Classical and Middle Age periods, such punishments as crucifixion, exposure to wild beasts, burying alive, impaling, tearing to pieces, and breaking on the wheel were common.

In the Middle Ages, the powers of human invention were continually employed in devising instruments and machines for the production of pain.

Screws were invented for compressing the thumbs; straight boots of iron for enclosing the legs, between which and the flesh wedges were driven by mallets; racks of various and hideous forms, capable of occasioning the most exquisite agony, were constantly devised. We have already described the *strappado*[1] (p. 181); another agonising punishment was "picketing," where the offender was suspended so that the weight of his body was supported by a spike on which he was made to stand with one foot;[2] and still another was the use of the "wooden horse,"[3] a narrow ledge or board on which the criminal was made to sit astride with weights fastened to his legs. Ducking or half drowning was often employed even for trivial offences.

Bentham relates[4] that a description of the various methods of inflicting torture and punishment which had been in use in the Austrian dominions, was ordered by the Empress Maria Theresa to be drawn up, this investigation being made with a view to ameliorate the existing laws. A large folio volume was accordingly put forth, containing engravings of the instruments of torture, and all the methods of execution. The book was only exposed for sale a few days when the prime minister, Prince Kaunitz,

[1] See *Bentham's Works*, vol. i, p. 413.
[2] *Ibid.* [3] *Ibid.*
[4] Vol. i. p. 413.

ordered it to be suppressed, for fear that it would inspire a horror of the laws.

In England, high treason was punished by dragging at the horse's tail, through the streets, from the prison to the place of execution; or by plucking out and burning the entrails, while the patient was yet alive; or by hanging by the neck so as not to destroy life; also by beheading, quartering, and the exposure of the fragments of the body in such places as the king should direct. Under the progress of the humane sentiment, this has all been changed to beheading and hanging.

Even in this century most frightful punishments were inflicted in the British West Indies on negroes breaking the laws—punishments as savage as anything in the bloody history of the past. In the time of George III., public whipping for dog-stealing was common in England, and the common law enforced the slitting of nostrils and cutting of ears for many offences. In the reign of Henry VIII., the mere drawing blood in the palace in a quarrel was punished by the loss of the right hand; and in that of Elizabeth, "the export of sheep" brought after it the loss of the left hand. Branding and whipping have been common in all countries.

Within fifty years, men have been hanged in England for sheep-stealing and stealing in a house; and in the early history of the United States, many offences, like forgery, stealing, and horse-stealing brought the death penalty after them.

In Massachusetts, under the early legislation after the Revolution, ten different crimes were punished with death, among them being burglary; blasphemy was punished with pillory and stripes till the year 1829; branding was employed for several offences. In Pennsylvania, in 1776, twenty crimes were liable to the death penalty, among

them such offences as witchcraft and counterfeiting. In Virginia and Kentucky, twenty-seven offences were punished by death or maiming; among them perjury, the destroying or concealing of a will, the obtaining of money or goods on false pretences, horse-stealing, and the like. In New York, on several occasions in the eighteenth century, negroes were burned alive for extreme crimes, and the tread-mill was in use as late as 1822.

The public whipping-post now only survives in some of the old Slave States in America, and will soon be ranked with the pillory or the strappado. Whipping as a penalty is still inflicted by law in England for very brutal offences, such as wife-beating and the like. The humane opinion, however, of the United States is opposed to it, on the ground that it brutalizes and degrades not only the criminal, but his associates. A result of this and other causes is, that in no other country are brutal crimes so rare. The tread-mill, also, is mainly abolished there. Whipping is still sometimes employed by prison officials on refractory criminals, and other severe prison penalties are used (often too freely), but public opinion is adverse to their frequent employment. All public degrading penalties, such as the stocks, the pillory, branding and the like, have mainly passed away in the United States. In some of the old Slave States gangs of negro prisoners are still employed on public works; but, in general, punishment is private and reformatory.

Among other merciful reforms, executions are made private, and are only inflicted where murder is clearly proved and of an aggravated character. They are destined evidently to be less and less common.

Imprisonment for Debt.—One of the frightful abuses of the past was imprisonment for debt. It is perfectly just that a person should be punished, who wrongfully and

knowingly defrauds another of his property. But so large a proportion of debts are incurred with the best of motives, accident and misfortune so often cause inability to pay, and the degradation of the debtor to the level of the criminal and pauper has so bad an influence on a large class, that Christianized and humane sentiment is opposed to imprisonment as a punishment for non-payment; while the modern experience is that the severe punishment does not necessarily tend to make the community more honest or the recovery of debts easier.

The accounts transmitted of the treatment of debtors in England and America in the past century, are harrowing. Thus it is said that in the eighteenth century, four thousand unhappy individuals were committed to prison every year for misfortune and poverty, and treated like criminals and outcasts. "One indiscreet compact could doom a wretch to a life-long confinement;"[1] a small debt exposed the unhappy person to perpetual imprisonment. Oglethorpe succeeded in 1728, with the help of parliament, in delivering from jails great multitudes of these unhappy creatures.

In the United States, even as late as 1829, it was estimated that there were as many as 3,000 of these unfortunate persons confined in the prisons of Massachusetts; 10,000 in New York; 7,000 in Pennsylvania; 3,000 in Maryland, and a like proportion in other States. In many of these debtors' prisons no provision was made for sickness, or even for ordinary cleanliness or comfort. There was often no separation of sexes; and these victims of misfortune were confined with robbers, vagrants and murderers.

Between 1821 and 1845, imprisonment for debt in the

[1] *Bancroft.*

various United States was abolished, except in cases where fraud was reasonably suspected.

The bloody era of the past, when man under the forms of law could inflict such useless torture and pain on the offender, is over. The humanity of Christ enters the prison, and fills it with hope and the sentiment of human brotherhood; it excludes bloody and useless and degrading penalties; it aims at reform as well as punishment; it seeks to do away with the gallows by the power of the school and the religious teacher.

The Sunday.—It is not enough considered by students of progress, how great a gift to the labouring classes and to the whole world is the Christian Sunday. It has become so great a necessity to the civilized world, that the wonder is how the non-Christian races or classic peoples were able to do without such a day.

Plato says somewhere that leisure is necessary to the acquisition of virtue, and that therefore no working man can acquire it. Plutarch calls it one of the most beautiful and happy inventions of Lycurgus, that he obtained for the citizens the greatest leisure by forbidding them to occupy themselves with any mercenary work. [2]

Christianity early obtained for the working classes of the Roman empire this great blessing, and not through the Greek method, of creating a class of helpless helots, but by the institution of the Lord's Day.

Under the prodigious impulse of the leading races of modern times toward production and the acquiring of material wealth, there would have come, without some such day, an absolute breaking down of the physical power, a wearing out of the brain, and a corresponding moral

[1] *Code*, iii. 411, 11.
[2] *Lyc.*, 24.

degeneracy. In fact the Christian Sabbath may be said to have saved the modern European and Anglo-American races. Had the greed for money never known an enforced rest; had the wheels of the factory, the hum of the market and din of business sounded through the streets seven days as now through six, and no customary day called away thoughts to things not bought or sold and to principles unseen and eternal, the modern people might have run down to the lowest point of materialism.

The Lord's Day is the greatest external gift of the Christian religion to the working classes. The labourer is insured his rest. His production is apparently cut short one-seventh, but as in the limiting the hours of a day's labour, he is found to effect more in the year, owing to the refreshment and rest given, and his moral value is increased. Where the Sunday is made a social and religious day (as in New England) without excessive strictness, the working man or woman returns to the task, revived, and morally as well as physically strengthened.

A religious Sunday is the best safeguard against the vice of the labouring class, intemperance.

In the chapters on Roman Law, we have shown what a step in humanity was the enforced rest of the Sunday to Roman slaves, after the empire became nominally Christian.

The Anglo-Saxon law under Christian influences, was equally regardful of the rest of the Sunday to the British slave and serf. In all countries under the nominal teachings of Jesus, that day has relaxed the muscles of toil, wiped away the sweat of incessant labour, and restored the worker to his family, reminding him that he is something beside an instrument of gain, and that he has other wants than those of earth.

The business and professional man of modern days owes fully as much to this blessed day. It is a festival of

humanity; it reminds the fortunate of their duties to the unfortunate; it calls away the mind from things material to the truths which belong to all times. It compels the scheming brain to rest. It is the day above all to remember Him who has brought such unmingled blessings to humanity.

If the world by any madness or degeneracy should ever renounce its faith in the supernatural, it would be compelled to renew the Sabbath under some other name, so indispensable is it for human progress.

We may surely count the Christian Sunday as one of the most blessed institutions conferred on the race by this faith.

CHAPTER XXXII.

CO-OPERATION AND PAUPERISM.

CHRISTIANITY, as we have frequently said, only touches indirectly on the distribution of the profits of labour. It inculcates constant benevolence, unselfishness, and continual imparting of wealth to the necessities of others; it discourages excessive accumulation, and teaches especial sympathy with the poor and labouring classes. There is an ideal taught by it in regard to property, which, like its ideal in respect to war, mankind has not yet reached. Property is evidently to be held for the good of others, and not for selfish enjoyment or the aggrandizement of a family. The employers of labour are to be guided by the golden rule, and to hold each one employed as a "brother in the Lord." The modes in which this benevolent principle is to be expressed to the world will be various. Without doubt, "co-operation" is precisely in the direction of the Christian law.

It tends to reduce the selfishness of trade and competition, it diminishes the deceit and falsehood which belong to some branches of business, it makes the buyer and seller one in interest and brotherly feeling, and it plants among men the seeds of brotherhood which Christ teaches. Its obvious influence is to bring into one body the labourers and capitalists of the world, making them

feel that their interests are the same, and their rights equally to be respected.

This does not, however, include as a corollary that individual property shall come to an end. It may indeed tend to limit its accumulation, but the more probable tendency of the Christian principle will be in the future towards a careful distribution of wealth for the good of others, in promoting science, art, charities, and education, and in curing the inevitable ills of humanity.

Commerce, production, and trade as they are now conducted, cannot be considered the final and completed condition of mankind.

Selfishness and dishonesty are too much its features to be consistent with the Christian ideal. In all probability some form of co-operation will be the final and Christian form in which production and distribution will develop themselves, where the interests of customer and dealer, of manufacturer and workman, of capitalist and labourer, are correlative, and Christian and just principles govern all.

Communism.—There is no doubt in many of the aspirations and aims of communism, a certain marked sympathy or harmony with the ideals of Christianity.

What is best in it has come from the teachings of Galilee. The sense of human brotherhood between rich and poor, the sympathy with the unhappy labouring masses of the world, the duty of allowing every human being the highest possible use of his faculties, the aversion to the deceit and fraud so often characterising commerce, and the opposition to the selfishness of competition, the horror of war of the Socialists, the aspect of property as a fund for the good of all—all these are plainly reflections from that light which shone eighteen centuries ago, from the hills of Judea.

Some of the Socialistic writers feel this; thus Proudhon

says, "Love thy neighbour as thyself, and society will be perfect; love thy neighbour, and all distinctions of prince and shepherd, of rich and poor, of learned and ignorant disappear, all the contrarieties of human interests vanish; love thy neighbour, and happiness with labour, without any anxiety for the future will fill thy days."[1]

Marlo[2] also says, "The heathenish principle is, grant to the few enjoyment at the expense of the many; Christian principle demands a moral regard for those natural conditions which ensure general prosperity with a view to effect the highest possible happiness for all in due proportion."

Christianity of course recommends no definite system for applying its humane principles, and therefore has no sympathy with Socialism in its plans for grouping human beings, or the power it would give to the State, or its hostility to property as such, or its methods of dividing the returns from labour, or its phalansteries or communities; indeed the Christian view of marriage and the family is directly opposed to that of many (though not all) Socialists.

The point of view however of both is somewhat similar, and some of the objects identical.

The Christian, like the Socialist, feels that this depression and abject poverty and dependence of great masses of human beings is not the ideal of humanity; that the fearful inequalities of human condition, the immense wealth of the few and the bitter penury or daily anxiety of the many, the intense selfishness of competition and the frauds or deceits of trade, the greed for money and struggle for the prizes of life, do not belong to the kingdom of God on earth, promised by the Master, or to any human condition

[1] *Syst. des Consid. Écon.*, vol. i. p. 329.
[2] Quoted by Kaufmann, *Socialism*, p. 158.

which the Friend of man might reasonably think a reward of his desires and his struggles. The Christian holds the key to the final solution of all these problems. How and by what various means it shall be applied he cannot fully say; the method must be the result of careful scientific study of all the conditions.

Socialism as interfering with individual development, or producing a monotony of life, or destroying the identity of the family, has no sympathy from Christianity.

Insurance.—The greatest practical benevolent discovery of modern life, and one destined yet to produce enormous effects in diminishing poverty and relieving misfortune—the application of insurance to human ills—is not directly a fruit of Christianity, and yet no doubt in the stimulus given to the benevolent feelings by this Faith, is to be found its indirect source. Insurance is the application of the savings of the fortunate to the assistance of the unfortunate, and yet not necessarily through benevolent motives. This ingenious device takes advantage of a self-regarding impulse to promote the good of all. Its application more and more to relieve the misfortunes of the labouring classes through government annuities, private life insurance provisions against accident, sickness, calamity and old age made by savings in time of health and prosperity and guaranteed by the whole community, will be one of the greatest blessings of modern society, and will undoubtedly be stimulated, if not caused by the influence of Christ in the world. We do not dwell on this important topic because it is not a feature of progress directly produced by the Christian religion, though under its influence; yet we regard it as the mode in which as civilization advances wealth will be especially distributed.

It is not an unlikely eventuality that in a distant future all men and women can be guarded against the inevitable

calamities and losses of life, and thus preserved from sinking into the lowest depths of misery, by a wise system of insurance by society or government—the insured contributing a fixed annual payment during health and strength (itself a preservative from pauperism), and the State taking charge of the funds, and appropriating from taxation enough to fill out the necessary annuity. It will be a kind of Christian communism, but not of a nature to produce dependence, because the ultimate enjoyment of the insurance would depend on savings made during health and prosperity; but it would be a poor law, or taxation of the fortunate for the benefit of the unfortunate, yet in a mode to promote self-respect and human brotherhood. Like the distribution of the surplus of the rich now made by taxation for schools, it would not be an appropriation of wealth which would embitter the rich or pauperize the poor.

Perhaps the best form of insurance, as in harmony with Christianity, would be voluntary annuity-associations, made from benevolent motives by the fortunate, and where the surplus needed over the annual premiums to form comfortable annuities, was contributed by the charitable.

As we have often argued in this work, the influence of the great Master is directly to lessen one of the greatest of human ills—Pauperism.

The self-control, sobriety, temperance and moderation He teaches, tend to a certain control over circumstances. The good-will He encourages, brings sympathy and help from others. The great sources of poverty are idleness, intemperance and vice.

The Christian, other things being equal, is less likely to be very poor, and a pauper he cannot easily be,—that is he cannot have that spirit of dependence, idleness and dishonesty, which are the essentials of pauperism. If by

misfortune he come to the lowest depths of human ills, he bears as a greater One hath taught him to bear, and does not become degraded in spirit. Having a sense of his great dignity as a child of God, and one for whom Christ hath lived and died, he is less likely to become a parasite on society And ever being in the mental habit of looking forward to the judgment of another life, he will be the more apt to provide for the ills of this; so under Christianity society tends, as has often been seen on the rugged soil and under the harsh climate of New England, to throw off pauperism and eliminate poverty. Many villages are known in that region, apparently so little favoured otherwise by Providence, where not a pauper and scarcely an abjectly poor person can be found for miles around;—the causes of this good fortune being mainly moral.

It is not claimed that Religion alone in future ages can remove pauperism from the world, but the Christian belief will tend towards a more just distribution of property; it will promote temperance and good morals; it will stimulate co-operation between labourers and between labour and capital; it will encourage many forms of insurance, and above all elevate and train the character, so that the human being, though unfortunate, cannot be degraded, and thus under the influence of Christ on the world, the labouring classes will be less likely to fall into extreme poverty, and if they do will be more readily assisted, or will not sink morally.

The Church in past history, especially in Europe, has so often been on the side of power and of the oppressor; it apparently now feels so little sympathy there in the great movements of social reform, that the labourer and the overburdened worker may well be pardoned if he do not behold at all in Christ His true form, that of the Friend of the poor and heavy-laden; but gradually as light spreads, even

the working classes of Europe will see that no influence in human history has ever done so much to remove the heavy burdens on labouring people, to produce such equitable distribution of wealth, to lessen the ills of poverty, and give dignity to the humble toiler, and everywhere to promote human brotherhood, as the doctrine and life of the Teacher of Galilee.

Cabet, a socialistic writer, well says:

"If Christianity had been interpreted and applied in the spirit of Jesus Christ, if it had been well known and faithfully practised by the numerous portions of Christians who are animated by a sincere piety, and who have only need to know truth well to follow it, this Christianity, its morals, its philosophy, its precepts would have sufficed and would still suffice to establish a perfect society and political organization, to deliver humanity from the evil which weighs it down, and to assure the happiness of the human race on the earth."[1]

[1] *Le vrai Christianisme.* **Preface.**

CHAPTER XXXIII.

FREE TRADE.—HUMANITY.—LIBERAL GOVERNMENT.

THE progress of mankind under the Christian ideal has been continually towards greater unity of races and nations. The Greek and Roman contempt for the foreigner has passed away; the Middle Age distrust and hostility to the stranger and "far-comer" has mainly vanished, except among non-Christian races. Different nations are approaching one another in feeling, ideas, habits and interests. There still remain, however, the relics of a more barbaric past in the separation made between different peoples or provinces by taxes and tariff duties. Yet even here there is progress. It is only about 900 years since a London merchant, trading with York, Chester or Bristol, paid duties and taxes as he does now with New York and Havre, and it was only in 1011 A.D. that a law was passed establishing free trade between London and other English towns.[1]

On the European continent, the Rhine for centuries was crossed with incessant lines of tariff at every border of a petty province, and freedom of commerce was only

[1] The men of London are to be safe and free over all England, and in all sea-ports, from toll, transit-duty and tonnage and all other duties (Hen. I. 2, 4). "If any one takes toll or custom from the citizens of London, the citizens may take as much from the burg with damages" (Hen. I. 2, 9).

secured by armed leagues of cities; in like manner, every large river was impeded by revenue exactions. In Germany, the baron or rural prince descended from his mountain castle and levied what taxes he chose on the passing merchant. The value of an estate in Germany in the Middle Ages was publicly measured by its nearness to any point where various roads met, and thus the opportunities for vexatious tariffs and plunderings were the greatest.

In France, as we have seen, the old savage feeling towards the stranger, which lingers in legislation still, showed itself during hundreds of years, in the odious droit d'aubaine. It was only in the close of the last century, as we stated before, that this right was abolished, and it is only in this century that the last disabilities of the stranger have been removed in French legislation. This relic of the Middle Ages still exists under the Common Law of England, and under the statutes of many American States, which impose disabilities on the right of aliens to hold real estate.

The savage "wrecker's right" or droit de naufrage, is a similar remain of the old savagery which prevailed, as we have shown, throughout Europe for many centuries. The unfortunate crew and passengers of wrecked vessels could be imprisoned and enslaved, and their property reverted to the lord of the coast or to the crown. It is only in modern times that this barbarism has been completely done away with.

Free Trade.—Christianity, as such, has nothing to say as to fiscal systems and financial or economical theories. It only increases human sympathy and struggles against human selfishness. But the great ideas which have been at the basis of modern political economy—the principles that the interests of all nations are really one; that the losses of one are the losses of all, and the gains of one become finally the gains of the whole; that selfish obstructions to

trade and intercourse re-act at last against the power which places them, so that the most liberal will end by being the most prosperous—these conceptions have received their greatest impulse from the teachings of Religion. One of the earliest statements of the effect of the Christian belief on freedom of trade is put forth in 1553, by Edward VI. king of England, in a letter[1] carried by two navigators, Sir Hugh Willoughby and Richard Chancellor, starting on a voyage to discover Cathaye.

The letter sets forth the disposition to cultivate the love and friendship of his kind, implanted in man by the Almighty, and the consequent duty to maintain and augment this desire, and "to show good affection to those who come from farre countries." . . .

"And if it be right and equity to show such humanitie to all men, doubtlesse the same might chiefly to be showed to merchants, who, wandering about the world, search both the land and the sea, to carry such good and profitable things as are found in their countries to remote regions and kingdoms, and again to bring from the same such things as they find there commodious for their own countries . . . for the God of Heaven and Earth, greatly providing for mankind, would not that things should be found in one region, to the end that all should have need of another, that by this means, friendship might be established among all men, and every one seeke to gratifye all."

As liberal ideas have, century after century, more and more taken possession of men's minds, there has been an increasing readiness for unrestrained intercourse and unshackled trade. The prosperity of large countries with varied productions—like the United States or Germany—where perfect internal free trade prevails through all interests and communities, suggests the feasibility of larger unions of different countries and races, and foretokens the more complete and grander union of all nations in the distant future, when the productions of one shall be open to all,

[1] Quoted by Ward, *Laws of Nations*, vol. ii., p. 332.

and all men shall buy and sell wherever it seemeth them good, without obstruction of tax or tariff—a day in which wealth shall be more evenly distributed among all human beings, than thus far history has known.

In this matter, fortunately, the selfish impulse which is struggled against by Christianity, is found on the broad scale and in a long period to be the injurious one. It will become more and more evident that for countries like Southern Germany to tax the manufacturers of North Germany is only a little less unprofitable than taxing the manufacturers of Belgium; and for Illinois to obstruct the entrance of the products of Massachusetts is a proceeding of the same kind as shutting out the manufactures of England. So extended and complicated are the connections of nations, that the true effects of selfishness are finally made more apparent than they are in narrow and personal relations. As civilization advances the Free Trade Powers will be more prosperous, and will confirm, by their success, the worth of the principle of humanity as a prudential maxim. The interests of one will be seen to be the interests of all.

Some of the old economical ideas of the past have been already removed by the progress of right reason and sentiments of justice, and fruitful causes of dissensions and wars taken away. Thus the exclusive possession by a nation of gold mines, or a rich colony, is no longer considered a loss to other nations; and the flow of the precious metals to the markets of one power is no longer regarded as necessarily an injury to the exporting power. A great calamity of one people is now known not to be a blessing to any other.

The tendency of the new ideas in political economy is clearly towards a greater unity of all states and nations.

In the meantime, the Christian influence, as in regard

to war, will be towards a compromise between the ideal of Christianity and the necessities of the times—a compromise ever approaching unchecked intercourse and unlimited trade, looking towards the time when all human beings shall be acknowledged to be of one blood and one family.

Another expression of the new humanity may be found in the charitable aid and sympathy, extended by one country to another in cases of public calamity. This century has been peculiarly rich in such expressions of a common compassion. They are the legitimate fruits of the Faith from Judæa. The aid given by the United States to the sufferers from the Irish famine, to the victims of floods in France and Hungary, to the wounded in France and Germany in the Franco-German War, to the struggle for Hungarian Independence, and similar gifts by the British people to sufferers from fire and accident and pestilence in America, and all other countries, as well as to those striving for liberty, are familiar instances of the new expressions of sympathy which now binds all nations together.

No such expressions of common feeling among independent nations were known to the classic world, or are witnessed now outside of professed Christianity.

With this advance in international sympathy may be considered the higher principles which govern the relations of civilized with inferior races. The old notion for which the Church is so much responsible, that a Christian nation discovering a barbarous land has absolute power over the property and persons of the pagan barbarians, has nearly passed away. The effort of every great nation, or at least the ideal of their conduct, towards barbarous and

inferior races is to elevate and civilize them. We say this, acknowledging how wofully inconsistent the conduct of individuals and nations has often been towards weaker or more savage peoples. The dealings of the Americans with the Indians, the wars of the English with the Chinese, Afghans, Zulus, and others seem to show no advance in the Christian sentiment of compassion towards the weak or justice to the inferior. Yet all who are familiar with the United States know that the most persistent and honest efforts are made now to civilize and improve these tribes; and though individuals entirely forget their compassion and religion in dealing with these unfortunate savages, yet the best classes and the government are honestly trying to atone for the sins of the past, and to do the best for this decaying people.

The British people also in the past few years have so far governed the instincts of pugnacity and pride, as to abandon an unjust campaign against an inferior race (the Zulus), even after a defeat; and to retreat from the country of another weaker people (the Afghans), which they had conquered, merely because the Christianized conscience of the nation regarded the war as useless or unjust. These are surely considerable victories for the Christian principle, and could not have happened even a century ago.

Then the efforts of the English to civilize such tribes as the Fijis,[1] are a new feature in history.

Such public measures as the attempts to force opium on China, and some features in the administration of India, are, we admit, miserable exceptions to this influence of the Christian faith on the relations of nations with inferior powers. But, on the whole, it must be admitted that there has been great progress in this matter; and that the

[1] See Miss Cumming's book on the Fijis.

tendency is more and more for the powerful races to be guided in their dealings with inferior by humane and Christian principles. We are far enough in this from the Christian ideal, but we are approaching it.

As particular evidence of this new spirit of compassion we may also mention the treatment by the American government of those whom they considered "rebels," at the close of the Civil War in 1865.

The struggle had been one of extraordinary intensity and bitterness. A million of lives are believed to have been sacrificed on both sides. The President of the Union had been assassinated. According to the precedents of history, the victorious party and the central government would have been justified in executing the leaders of the rebellion and confiscating their property. Many persons advised this course. But the American people, in some directions, are singularly imbued with the compassion of the Christian teachings. The voice of religion and sound wisdom prevailed over the cries of revenge and passion; and not a life was taken or a dollar confiscated by judicial process after the close of the war, for complicity in the rebellion. On the contrary, in a few years the "rebels" were restored to equal rights with all other citizens of the Union.

The very large sums spent and the devotion of thousands of lives by nearly all Christian countries to the work of teaching and improving distant and often savage peoples, is also an expression of the higher humanity and brotherhood, now a fixed part of the moral habits of leading nations. It is impossible to imagine a Greek or Roman society even thinking of such an object. The only thing parallel to it, is the efforts of the Buddhist priests to proselytize distant tribes.

Popular Education.—The great movements for popular education are stimulated by the same principles of humanity. The child of the poorest is equal to the richest in the new fraternity, and should have the same essential opportunities. In all countries even faintly touched by the Christian spirit of equality and brotherhood, there are widespread efforts to educate the masses.

Schools are open to all. The rich are forced to give of their abundance for the education of the poor. Not only are common schools open to every class, but higher schools and colleges of learning are provided for the masses. Even laws are passed compelling attendance: and provisions are made by individual charity for those who are poor and ill-clad.

This is one of the most remarkable fruits of this Religion in modern times. It is a forcible distribution of wealth to confer the highest possible blessings on the needy. It is a confession by society that the most ignorant, degraded and destitute person is a brother of the most fortunate, and must have every fair opportunity to exert his powers.

If one could imagine the proposition made to the archai of Athens to tax the rich in order that the helots might learn to read the Greek classics; or a measure before the Roman senate to set apart a new revenue for providing teachers for the plebs and the slaves, one can rightly measure the progress of the Christian sentiment of equality in these eighteen centuries.

And as one of the marked fruits of Christianity, a seed of good almost unknown to the classic times—we may mention the societies of lovers of men and of God, which exist now in all civilized countries. These associations may often be bigoted or worldly, still on the whole they attempt to teach men to love one another, to be just and temperate and pure and unselfish. No moralist can re-

gard them with indifference. They must exert a profound influence on the whole morality of the modern world, and nothing of a popular nature like them was known before the Christian era—though there did exist under the Roman empire, certain "clubs" of a private character, which were partly benevolent in their offices, and perhaps formed a basis for the later Christian Churches.[1]

As a more intangible result, but not less real, of this great moral power in the world, we should not omit the new Hope given to mankind. When one considers how vast a proportion of the human race are exposed to inevitable sorrows and disappointments, how many are crushed by poverty and oppression, what multitudes never rise to any condition of prosperity, and how all must go through pain, sickness and the shadow of death, it will be understood what an immense happiness such a faith as the Christian has spread among the poor, the oppressed, the sorrowful and unfortunate, and all the weary and heavy laden, for eighteen centuries.

It has made the world a much brighter place to multitudes of people, has wiped away tears without number, has consoled the lot of countless slaves and captives, has upheld unnumbered widows, orphans and grief-laden, and has thrown a light and hope over millions of death-beds. These results may be alleged by the objector to be imaginary, yet they are none the less real. In counting the fruits of this Faith, we may fairly reckon the happiness scattered in the modern world as compared with the ancient.

Among the somewhat intangible fruit, should not be forgotten the greater number of lives in modern times inspired and more or less pervaded by moral ideas and purposes, by purity and truth and universal good-will

[1] See *Boissier*, *De Rossi*, and *Le Blant*, previously cited.

The few in all ages have felt moral impulses, but how many thousands exist now in every small community whose lives are conscientiously guided by these ideals and who often try to live up to them. This is a result which cannot always be measured in figures, but it none the less continually works upon the customs, laws and institutions of modern society, and has been the source of all the best reforms.

All these are pre-eminently the *Gesta Christi:* for such lives are inspired by and modelled after Christ.

Liberal Government.—Christianity in itself teaches nothing in regard to any particular form of government. Christ appears to have inculcated submission to the then existing government of Rome—one of the most despotic of tyrannies. He probably saw that the best reform of political institutions lay in the reform of individual character. He scattered seed which eventually must ripen in a harvest of equal rights to all. Where men should do to one another as they would have others do to them; where the poorest and lowest was regarded as the child of God and friend of Christ, for whom He lived and to save whom He died, there after the course of ages could be no tyranny or political injustice, or inequality of rights, or legal oppression. All persons and classes would eventually, as a matter of equal right, have a share in the government. Such principles lead ultimately, as to a logical conclusion, to each individual man or woman having a part, though perhaps not an equal part, in making the laws, choosing the rulers, and otherwise administering the affairs which relate to the welfare of all. What the form is by which this should be effected is a matter of indifference to Christian teachings. These merely demand equal rights, equal protection and an equal use of their faculties for all. But under their influence, the tendency of the world is

plainly towards bestowing political rights on the masses; towards parliamentary and democratic institutions. The races or peoples, which profess to be governed most directly by the words of Christ, the Anglo-Saxons, Anglo-Americans, and Northern Germans, are those most inclined to free institutions. The freedom they have gained in religion, and the habit of listening to the reported words of Christ rather than to ecclesiastical teachers, have led them towards freedom in government, and a respect for the rights of all.

We do not mention these peoples as necessarily embodying or following all Christ's principles more than the Romanic or Keltic races, but as applying them especially to political rights.

A sceptical writer, distinguished for his eloquence and learning—Renan—has said that "the Gospels are the Democratic Book *par excellence*."[1]

Great respect for the individual, equal justice to all, and a deep sense of humanity and equity—these are the natural fruits of the teaching of Jesus, and these lead to democracy. Undoubtedly, modern liberal institutions are an indirect effect of the religion first taught in Galilee. They seem nowhere to have flourished outside of Christianity, though the sense of humanity and love of liberty belong to the whole race. No moral instincts and no other religion have ever given such a stimulus to liberty and such a sanction to justice for all. But it need not be said that this Faith is equally opposed to tyranny by the people as to tyranny by the king; and objects to license, disorder and aimless revolution, as it does to despotism.

Its influences, have, as it were, only begun, in the political field. Under it, women are without doubt destined to take continually more part in the government of all civilized

[1] Le Livre Democratique par excellence. (*M. Aur.*, p. 634.)

countries, and the working classes will be more and more relieved of inequalities pressing upon them.

We cannot at present foresee all the consequences to result from these changes, certain to come. They will no doubt produce reactions and many difficulties. But they are in the line of human progress under the stimulus of this religion; and their final result we cannot question.

Diminution of Pestilences.—The reduced mortality from pestilence in modern times, and certain moral facts connected with these ravages, at first struck the mind of the writer as evidences of a sanitary progress in human history due to the influences of a pure religion.

The fearful ravages of various diseases throughout the world, both in the classic period and in the Middle Ages, are hardly credible to modern ears. Taking a single century and one disease (the so called "Black Death"), we find from Hecker, that during the fourteenth century it raged from China to Iceland and Greenland, almost depopulating vast countries, the highways being covered with corpses in Syria and Armenia; the ships on the Mediterranean floating without sailors and steersmen; in Europe two queens, and many bishops and distinguished persons perishing; in Germany alone, a million and a quarter, or more than half of the population, dying; and in England, hardly one-tenth of the inhabitants escaping, and 50,000 corpses being buried in London alone. The total destruction was estimated in Europe and Asia, at 23,840,000.[1]

In every century, similar though not so destructive pestilences are mentioned. They arose from the non-Christian countries in almost all cases, and were stimulated in every country by intemperate and immoral habits.

[1] *Hecker*, p. 85.

They found their appropriate *nidi*, in which to ripen their seeds, in those wicked and heathenish centres of nominally Christian cities, which form in all ages exceptions to the rule and influence of Christianity.

They have gradually diminished in power in modern times, though the non-Christian lands still form their source and centre. The most moral and religious populations are in all Christian countries the most exempt from them.

Still, the increasing control over these ravaging pestilences, the diminution of the mortality from them, the narrower sweep of their power in Christian countries, seem to be due more to the advance of science and civilization, than to the direct influence of Christianity. The increased skill in the treatment of disease, the more careful system of separation and exclusion of infected cases, the cleaner and more wholesome habits of modern life, the greater comfort enjoyed and the more wide-spread morality and self-control of the poorer classes, are undoubtedly the special causes of the diminution of the fatal ravages of pestilence in modern, as compared with ancient, times. The last cause, however, is one indirectly due to Christianity; so that we can at least say that a pure religion is one of many causes of the comparative freedom of the modern Christian peoples from very deadly plagues; and in like manner of the lower death-rate and longer average of life, peculiar to the experience of modern civilized races.

CHAPTER XXXIV.

INTEMPERANCE.

AT first thought it will seem remarkable that the vice of intemperance under alcoholic stimulus has grown with civilization. The modern European and American leading peoples are certainly more under this terrible curse than were the oldest races known to us, the Egyptians, Hindoos, Persians, Assyrians, and Jews, or the Classic nations. The reasons are to be found partly in the fact that nearly all ancient civilization, and almost all these great peoples, found their central seats in mild or warm climates. Intemperance is a vice especially of northern races, and under cold climates. Then as arts and sciences have advanced, new stimulants have continually been discovered or invented; and above all, the complex work of modern society demands a greater variety of nerve stimulus, and the wear of the brain naturally seeks some real or supposed counter-agency in narcotics and alcoholic stimuli. The human family seems utterly unable to do without some of these stimulants, whether contained in tea, coffee, tobacco, alcohol, opium, or the manifold substitutes known to barbarous tribes.

The leaders of modern civilization have been the northern races, and climate and transmitted habits have made them peculiarly sensitive to all these various forms of stimulant. Under those influences, and the demands for excessive

brain-work peculiar to modern conditions, or the exhaustion from muscular labour in confined air, the temptation to the over-use of these stimuli for all classes in modern times has been very powerful. The chill and dampness of northern climates, the inherited German and Keltic habits of conviviality, the want of comparatively innocent alcoholic stimulants, the over-work of brain in one class and the wear of muscles in crowded factories in another, acting with ignorance and inherited weakness of will, are the causes of the astounding intemperance among such peoples as the Swedes, Scotch, English, and Northern Americans, compared with the moderation of such nations as the Hindoos, Jews, and Romans. No language can exaggerate the evils of this fearful curse in modern times, especially on the labouring classes of the countries we have named. Only war surpasses it in the harvest of misery and poverty and crime it sows for the families of the poor. It desolates homes, breaks the hearts of women, turns out children worse than orphans on a cold world and thus makes them criminals, impoverishes the labourer, sows quarrels, violence, disturbance, and murders, fills prisons and almshouses and hospitals, and is the prolific cause of idiocy, insanity, disease, and moral and physical degeneration. It would be safe to say that in all northern countries, more than half of all the offences against person and property, are caused directly or indirectly by excessive use of alcoholic drinks. The amount spent by the labouring classes on them would alone prevent pauperism in all Christian countries. Thus Dr. Lees estimates that the English working classes spend every year the enormous sum of £350,000,000 for liquors alone. In 1860, the value of the distilled and fermented liquors in the United States was estimated at $740,000,000. In 1869–70, one person in every thirty is said by Dr. Beard, to have been arrested

for drunkenness in Liverpool, and one in thirty-eight in Manchester. The number arrested every year in New York alone for offences caused by drunkenness, is some 45,000.

It was reported by the Massachusetts Bureau of Statistics of Labour in 1879 and 1880, after careful investigation, that eighty-four per cent. of all the crimes of the State which came before the courts, came directly or indirectly from the abuse of alcoholic stimulants. The Prison Commissioners of the same State report that for the year 1880, ninety out of every hundred persons committed to the prisons, were intemperate; and that the cost of protecting the State from this army of criminals during the year was $1,971,198.

It is estimated by a careful investigator (Judge Aldrich), that the American people spend annually some $600,000,000 on intoxicating drinks.

There needs no amplification of figures showing the fearful curses coming from Intemperance.

Does Christianity work against it? Has it made progress in that direction in the past, and is it likely to make more in the future?

There can be little doubt to any familiar with social customs in civilized countries, that among all classes there has been a great change in the direction of Temperance during the past hundred years.

This is largely due to the grand ascetic movement in favour of entire abstinence from alcoholic drinks, which, beginning in the United States under the influence of religion, has spread over Sweden, Great Britain, and America, and influenced thousands who have never taken the vow of abstinence. Movements in the United States against the extreme use of alcoholic drinks began very early.

Thus in the Massachusetts Bay records, as far back as 1646, we find a law, that, "forasmuch as drunkenness is a vice to be abhorred of all nations, especially of those who hold and profess the gospel of Christ Jesus, and seeing any strict law against the sin will not prevail, unless the cause be taken away,"[1] it is enacted that no wine under a quarter-cask shall be sold except by paid licence, and severe penalties are threatened to any one selling drink at unseasonable hours, or guilty of drunkenness.

In 1651, a law is recorded in Easthampton, Long Island, checking the sale of ardent spirits. Many similar laws are found in American colonial history, influenced by the fervent Puritan spirit. In 1760 the various religious societies protested against the use of alcoholic beverages at funerals; and the Friends early abolished the practice. In 1777 the first Congress at Philadelphia, influenced by the religious sentiment of the country, passed a resolution against distilling grain for liquors, and against excessive drinking. In 1788 an act was passed by the New York Legislature, regulating the sale of liquors, and controlling the taverns. In 1789 the first Temperance Society is said to have been formed at Litchfield, Connecticut, by the active members of the church. In 1797 the Quarterly Methodist Episcopal Conference of Virginia passed a series of resolves, pledging their honour as Christians, not only to abandon entirely the use of ardent spirits themselves, except as medicine, but also to use their influence to induce others to do the same. The Pennsylvania Synod even recommended their pastors to preach against "the sin of intemperance." The National American Temperance Society was formed in 1826 in Boston. Still, with all these efforts, habits of intemperance prevailed in this country to an alarming extent. Even as late as 1836, a distinguished divine of Andover is

[1] Quoted by F. W. Bird. *Papers of Amer. Soc. Ass.*, p. 98, 1881.

reported to have stated publicly that he knew over forty ministers who were either drunkards, or addicted to habits of hard drinking. The "Temperance" movement, however, grew into the "Total Abstinence" movement about 1833; the churches of the country everywhere struggled against the ruinous vice, and the discussion of the subject, especially by pastors and lecturers, roused the conscience of the entire nation. Great numbers of drunkards were reclaimed, and, more important still, the young were started with a horror of this excess, and the convivial habits of society entirely changed. Whereas formerly few families of the fortunate classes were to be found without an intemperate member, in latter years it is an exception to hear of such instances. The ascetic movement has reached all classes. In no country of the world are there so many families of comfortable circumstances who never have wine or liquors on their tables, or so many hard-working operatives who never touch these stimulants. What is called the Total Abstinence movement, which is a kind of ascetic off-shoot of Christianity, has scattered untold blessings in this country, and should ever be remembered with profound gratitude. Like most ascetic efforts, it is not destined to be permanent; but it was needed and will be needed. There are signs already of its yielding, especially under foreign influence in the United States, to a Temperance based on rational self-control; and the aid to this will be all the civilizing influences of society. For the man under the fatal spell of this appetite, the only possibility of regaining self-control is by entire abstinence; and the best of all reformatory influences is the power of Christianity. The shock which the dread of retribution threatened by this belief gives, will awaken from vice, and then the transforming power of Love, spoken of by Plato, for a "divine Person" will fill the soul with such an enthusiasm, as to

raise it above the power of these base appetites, and permanently reform the nature.

The writer in these statements does not speak of theories, but of facts, which he has often seen exemplified in most striking life-histories.[1] The best of all safeguards against intemperance is the Christian Faith.

The power of Religion in checking this vice is seen now in tens of thousands of families throughout the land, and in the higher standard of temperance spread abroad among the whole people.

Many of the States have adopted prohibitory laws, preventing all public sale of liquors, and others, strict license laws.

It is true that with all this there is a fearful amount of intemperance in the United States, especially in the large cities among the foreign poor and their descendants. But here Christian philanthropy is discovering very ingenious means of diminishing its growth. A great deal of intemperance arises from idleness, from want of education, from lack of virtuous amusement and proper sociability, from contact with bad example, and from want of hope and the consciousness of social degradation. The religious bodies in the cities have sought to meet these wants by opening coffee and club rooms for working people; by providing virtuous amusements, and above all by opening "industrial schools" for the children of the poor. It is found by long practical experience that the daughters of habitual drunkards being brought under the daily influences of order, industry and purity in these schools, having better food, coming in contact with superior and refined women, and hearing lessons of morality daily, hardly ever grow up in the way of their parents, but become naturally sober and decent women.[2]

[1] See *The Dangerous Classes of New York.* [2] *Ibid.*

It may fairly be said that a considerable diminution in intemperate habits has been caused in the United States by the influence, direct and indirect, of the religious principle. Social habits are much improved, and great numbers of the poor have been rescued from the control of this vice. It needs only the same influences, continued in manifold forms, to eradicate the vice from thousands of families. We have beheld the beginnings of this renovating power in American social life, and we can logically argue to its future wide influence as time goes on. In Europe, also, there has been, in the countries most given to intoxication and extreme habits of drinking, a very marked improvement in the past few years. The reform in favour of abstinence in Sweden has been especially impelled by religious considerations and by the religious teachers. It has already accomplished untold good in that country.[1]

The various Temperance and Total Abstinence movements in England and Scotland have received their great impulse from a like source. They have not only affected great numbers of the common people, but their reflex power has worked upon the middle and wealthiest classes, and produced or aided a general reform in the convivial habits of society. In the higher English society there is not nearly the amount of drunkenness which prevailed a century since.

The great diminution in the consumption of spirits by the British working classes for the past few years, as shown by the revenue returns, is another evidence of increasing sobriety.

We do not doubt the mingling of many other influences in bringing about a greater sobriety through all classes in the British Islands. In some respects the progress of the arts and sciences works against a low habit like this;

[1] See *Norse Folk*, by the Author.

more nourishing food, purer water, higher amusements, and a better social tone, all tend to diminish its power. But the direct and indirect influence of religion[1] is the most powerful obstacle to the spread of such a vice, and to this is largely due the improvement sometimes among persons who themselves may be indifferent to the Christian Faith.

It is not claimed of course that the Christian Religion has done all that lay in it towards removing intemperance from the world. It has only begun its workings. Men have not received its teachings as they will yet receive them. But the essential influence of this Faith is to raise the man above a low appetite, to strengthen his self-control, and reform his whole nature. Where Christianity had full power, there could be no drunkenness. From the results accomplished in a few centuries, all can judge what will be the effects after long periods of time.

[1] One of the most striking instances of the power of this Faith over intemperance is in the results accomplished by the Women's Christian Temperance Union of the United States with its three thousand auxiliary societies, and its vast number of devoted women working for this end. See its reports and Mrs. Willard's writings.

CHAPTER XXXV.

PERSECUTION.

THE most disgraceful feature in the history of the Christian Church is its persecution of opposing or differing beliefs. There is nothing whatever in the words of Christ or the teachings of the Apostles to countenance this practice. On the contrary, it is opposed to the very essence of the Christian system; and John, in defining God as Love, would for ever put an end to such travesties of faith in Him as would lead men to hate and persecute. The evil tendency arose, however, very early from the idea, born of ignorance and bigotry, that a change of opinion produced by force would be for the advantage of the new Faith, and for the good of the believer thus compelled, and that men were guilty who held incorrect beliefs. These ideas were early engrafted in Roman law,—an evil feature which was derived from the influence of the Church. Justinian's legislation against Arians and other heretics bears a stamp of ecclesiastical bigotry scarce known to Roman legislation. The Emperor Theodosius reached the acme of bigotry when he threatened death as the legal punishment of heretics, with the words that "no place must be left them where they could do injury even to the elements themselves";[1] and where he declares that with apostates even penitence does not obliterate their

[1] Quoniam his nihil relinquendum loci est, in quo ipsis etiam elementis fiat injuria (*Cod.* i.–v. *Leg.* 3, etc.).

crime.[1] But nothing in all history has been so stupid and useless and cruel as the persecution from the earliest ages, by nominal Christians, of a gifted race, united to them by many ties—the Jews.

The legislation against this unfortunate race began as far back as the time of Justinian. They were persecuted and pillaged incessantly; they were forced to pay immense sums to remain under the protection of the common law, and many were farmed out to particular men for purposes of extortion. The code of the Visigoths early showed the bigoted influences of ecclesiasticism, and under it the Jews were forbidden to testify in courts of justice, and were spoken of as "beasts" in law, and their property as belonging to the noblemen on whose lands they chanced to be. In Germany they were long considered the serfs of the Emperor; in England they were frequently held in common servitude. In France the whole body at times was banished, and many were put to death with tortures. It was even decreed that communication with Jewish women should be punished as with beasts, and both parties burned alive.

The persecutions of the Moors by the Christians of Spain; of heretics and Protestants under the Inquisition; of Protestants by Catholics, and Catholics by Protestants; of the Puritans by the Church of England, and of Baptists and Quakers by Puritans, are all too well known to need relating. The history of the Christian Church has been a history of opposition to her Master in the matter of hate and persecution of opposing beliefs. The vestures of the historical Church are stained deep with the blood of the innocent, shed for ideas which they believed true. Individuals in every age, inspired with the spirit of the Teacher of Love, have urged the hatefulness

[1] Nec flagitium eorum obliterabitur pœnitentiâ.

of persecution, the tolerance of differing opinions, and the difference between character and mere intellectual belief. Though uttering only the common-places of Christian teaching, they were derided or not listened to, and the religious world went on violating the first principles of the Gospel.

In each century more and more individuals became imbued with Christian truths, and believed and urged that man was responsible to God alone for his religious opinions; that character rather than belief was the test, and that any injury done to a human being for his religious ideas or practices (so long as they did not conflict with common morals), was a violation of the principles of Christ's doctrine, and a wrong and injustice. These protests arose, too, from those nominally outside of Christianity who had felt its influence though denying the name, and thus the current of opinion moved gradually against the practice of religious persecution. Thus the celebrated John Robinson, father of Puritanism in New England, says,

"It is no property of religion to compel to religion what ought to be taken up freely; that no man is forced by Christians against his will, seeing that he that wants faith and devotion is unserviceable to God, and that God not being contentious, would not be worshipped of the unwilling . . . and lastly, considering that neither God is pleased with unwilling worshippers, nor Christian societies bettered, nor the persons themselves."[1]

Grotius[2] is equally in advance of his times:

"But they that persecute others for no other cause but because they either teach or profess the Christian religion, are most unreasonable. For certainly our Christian doctrine considered in its sincerity

[1] *Works*, vol. i. p. 40.

[2] *Right of War and Peace*, book ii. c. 20. (Evait's translation, 1782).

without any commixture, contains nothing prejudicial to humane society, nay that doth not rather advance it; it shall speak for itself and its enemies shall confess no less."

In the United States, where both practice and legislation are much under the influence of Christian motives, all persecution for religious opinion, or withdrawing of civil rights on account of belief, or interference in any way with religious worship or practices (where not conflicting with common morals), has passed entirely out, not only of use, but even from the thought of men.

Persecution is passing away also in Europe, though surviving here and there in disabilities of Jews (as in regard to the marriage of Christians and Jews in Hungary), or violence against Jews (as in Russia), or legislation against Catholics (as in Germany), or proceedings against heretics or schismatics.

The day is not far distant in which the charity of Christ will be embodied in all the legislation, practice, and opinion of the civilized nations, and all men shall be free to think, worship, and practice (within reasonable restraints) as to them may seem good. Then at length will the Church of Christ be like its Head.

CHAPTER XXXVI.

HUMANE PROGRESS AMONG NON-CHRISTIAN PEOPLES.[1]

IT is a grand and consoling thought, harmonious with reason and the utterances of inspired men, that there is in human history a "continuity" of Divine revelations. That is, that the Spirit of God has not merely manifested itself to one race in a remote corner of the world during a few years, but that He has been struggling with human souls during all ages and among all races. Certain individuals have especially received these inspirations, and have so grasped certain moral and spiritual truths, or have led such pure and unselfish lives, as to profoundly affect the humane and moral progress of whole races of men. Indeed the continuance and relative advance of great nations have often depended on the degree to which they followed the instructions and truths taught by their great religious leaders. Under this aspect, GOD is an ever-acting force in human history, and men and women in the most widely scattered countries and among races given up to superstition or degrading practices, have opened their souls to this Divine light. The light which they in turn have given to the world, has not been indeed like the pure radiance shining forth from the "Son of Man" in Judæa,

[1] We object strongly to the invidious implication of the term "Heathen" peoples, as though such races were all wild tribes, given up to idolatrous and barbarous practices. Some of the heathen peoples have grasped a great deal of Divine truth.

but it has contained rays of the heavenly light, and, though obscured by mists of superstition and the clouds of human ignorance, it has yet guided many a weary soul in the dark ways of the world.

Paul evidently had these truths in mind, when he declares that "the invisible things of HIM from the creation of the world are clearly seen, being perceived through the things that are made, even His everlasting power and Divinity" (Rom. i. 20); and again, "For when Gentiles which have no law, do by nature the things of the law, these, having no law, are a law unto themselves, in that they show the work of the law written in their hearts, their conscience bearing witness therewith, and their thoughts one with another accusing or else excusing them" (Rom. xii. 14, 15); or, when on Mars' Hill, he said to the apparently superstitious worshippers of an "unknown God," "Whom ye ignorantly worship, Him declare I unto you" (Acts xvii. 1–23). Peter too expressed a like thought in the words "Of a truth, I perceive that God is no respecter of persons: but in every nation, he that feareth Him and worketh righteousness is acceptable to Him" (Acts x. 34, 35).

In comparing humane progress under peoples nominally Christian and those non-Christian, it is but just to take among the latter, nations who have reached a high state of organization and the most complete civilization which we find outside of Christianity. In this view we shall choose the *Hindoos*, the *Chinese*, and the *Arabs*. Our comparison, under the limits of this work, must of necessity be very brief, and only touch on points familiar to students.

The Hindoos are admitted by historians to have attained to a very high intellectual and moral advancement. The ancient books of their faith contain scattered through them moral and spiritual truths which in power and depth

equal many of the doctrines of Christianity. Their sages and poets frequently saw the truths of the Unity and Spirituality of God, of a superintending Providence, of man's sin and his want of forgiveness, of the need of an "Angel Messiah" or Incarnation of Divinity, of immortality, of judgment to come, of human brotherhood and equality before God, and all the duties to God and man that spring from these doctrines.

But with all these truths, were included soon so many falsehoods, so many superstitions, vagaries, bloody, cruel and licentious ideas and practices, and the want of any one simple and pure life and doctrine like those of JESUS, that the people very early fell into debasing practices which checked progress. Mr. Mill, in his History of India, justly says,

> "If those qualities which render a man amiable, respectable and useful as a human being; if wisdom, beneficence and self-command are celebrated as the chief recommendations to the favour of the Almighty; if the production of happiness is steadily and constantly represented as the most acceptable worship to the Creator, no other proof is requisite that they who framed and they who understood this religion, have arrived at high and refined notions of an All-Perfect Being" (vol. i. p. 263).

The corruptions of the early Brahmanic faith show that such an idea of Deity had long passed away among the masses in India. The deification of licentiousness and cruelty in the Hindoo faith has degraded the people, and no doubt tended to produce the singular indifference to human suffering, noticed by travellers,[1] and the licentious-

[1] We have again and again witnessed along the great pilgrim-routes of India, harrowing illustrations of this sad truth; we have seen poor creatures smitten with disease, lying on the road-side, passed by hundreds of their co-religionists with no more concern than if they were dying dogs; we have seen the poor parched sufferers with folded hands and pleading voice crave a drop of water to moisten their lips, but all in vain." (Vaughan's *Trident, Crescent and Cross*, p. 31.)

ness of many classes. The two great causes, however, of the want of progress in India, as compared with Europe, are the existence of caste and the position of woman.

Caste is not improbably a result of conquest, but it has been strengthened instead of weakened by the religion of the Hindoos. The laws or precepts of Manu (supposed to date back to the early centuries after Christ) speak of caste (book i. 8) as a law of nature and of Divine appointment, as much as the creation of different animals.

"Since the Brahman sprang from the most excellent part, since he has the priority arising from primogeniture, and since he possesses the Veda, he is by right lord of this whole creation" (i. 93).

Even the Rig-veda, as quoted by Williams ("Indian Wisdom") makes the Brahman to issue from the mouth of Vishnu, the kingly soldier from his arms, the husbandman from his thighs, and the servile Sudra to come from his feet. It is obvious that a people whose religion stamps such social divisions on their organization, cannot advance under modern conditions. All observers agree that caste in India makes anything like modern European progress impossible. The first effort of Christianity on individual Hindoos is of course to abolish caste ideas and prejudices. Such immovable divisions of class are opposed to the foundation principles of Christ's doctrine.

But even more than caste, has the position of woman in India retarded her progress. The oldest religious documents and many of the older laws appear to have recognised a higher influence and position for woman than do the modern. Still, even the laws of Manu assign her a very inferior rank. The wife is permitted to be sold or beaten; she is spoken of as having no will of her own and as unfit for independence.[1] A husband must constantly

[1] Williams' *Indian Wisdom*, p. 529.

be revered as a god by a virtuous wife. No sacrifice is allowed to women apart from their husbands; no religious rites, no fasting.[1] Even the Bhajavad-Gita represents woman as entering heaven along with the lowest caste.[2] Mill[3] quotes from an ancient Hindoo writing—the Hitopadesa, or "Book of Friendly Advice,"—

"In infancy, the father should guard her; in youth, her husband; and in old age, her children; for at no time is a woman fit to be trusted with liberty." "Infidelity, violence, deceit, envy, extravagance, a total want of good qualities, with impurity, are the innate faults of women."

According to this author, she could not under the old code give evidence; she could not share in the paternal property; she was by system deprived of education; as a wife she was held unworthy to eat with her husband. The latter could dismiss her on the smallest pretexts, but no violence or desertion or sale could absolve woman from obligation to her lord.[4] "Day and night," say the precepts of Manu, "must woman be held by her protector in a state of dependence."[5] "By a girl or a young woman, or by a woman advanced in years, nothing must be done even in her own dwelling according to her own mere pleasure."[6] Nor is the modern position of woman in India superior to that assigned to her in ancient law and custom.

"No Hindoo woman," says Williams, "has in theory any independence. It is not merely that she is not her own mistress; she is not her own property, and never under any circumstances can be. She belongs to her father first, who gives her away to her husband, to whom she belongs *for ever*. She is not considered capable of so high a form of religion as man, and she does not mix freely in society."[7]

[1] *Manu*, v. 155.
[2] *Williams*, p. 145.
[3] *Hist. of India*, p. 295.
[4] *Mill*, vol. i. p. 297.
[5] *Manu*, quoted by Mill.
[6] *Ibid.*
[7] *Indian Wisdom*, p. 435.

"Home[1] is so shut in by the close shutters of caste that healthy ventilation is impossible. The fresh air of heaven and the light of God's day have no free entrance. Weakly children are brought up by ignorant, superstitious, narrow-minded mothers in a vitiated atmosphere. Hence, in my opinion, the present deteriorated character and condition of a large majority of the people of India."

A Hindoo convert to Christianity thus describes his feelings in regard to marriage:

"Escaping the maladies of superstition and standing under the light of true religion with feelings of love and refinement in my heart I shudder at and clearly see the defects in the system we have considered. The very thought of marrying a person whose joys and sorrows I am to participate in, who is to become one with me, without knowing her character and seeing her face at all, makes me shudder. . . . In Bengal, with many, the affection between husband and wife is rather compulsory than heart-felt. True love does rarely grace the connubial life of the Hindoo. The children do not know what innocent social comforts are. Vice with its thousand branches twines round their lives. Faithlessness to the married relation, discord between and separation of two who are strictly required to be one, are the defective features of Hindoo families in general."[2]

We have purposely refrained from quoting to any large extent from the views of missionaries, who may be supposed on this subject to be prejudiced. But even Sir Henry Maine, who regards these matters from a peculiarly philosophical standpoint, attributes in a passage we have already quoted (p. 35), the lack of progress of this great branch of the Aryan family, as compared with the European, to the different position they gave to woman. Whence the European sentiment and practice are mainly derived, we have already seen.

The cruel practices once habitual in India, and now not

[1] *Indian Wisdom*, p. 137.
[2] Gangooly's *Life and Religion of the Hindoos*, p. 53.

wholly[1] abolished by the influence of a Christian people, are painful evidences of the want of humane progress. Self-immolation, human sacrifices, the burning of widows, the exposure of the sick and feeble, and like practices could not possibly exist where Christianity had the slightest power.

Buddhism.—One faith has existed in India as a reform of Brahmanism, and has extended to China, Japan, and other countries, which in the life of its founder and the truths he taught, showed a peculiar Divine inspiration that brought it in some respects very near to Christianity. Undoubtedly in the original form of this religion are seen the workings of the Divine Spirit on a most pure and exalted human soul. Indeed the truths taught by Gautama-Buddha seem to be fore-gleams of those taught by Christ.[2] Never has compassion been more Divinely illustrated in a human life; nowhere are self-sacrifice, human brotherhood, universal benevolence and sympathy, and purity of heart and life more directly taught than in the words transmitted of Sakya Muni. The Buddhist legends might well teach that all nature budded into spring and a thrill of joy reached every animated being, that the blind saw and the dumb spake, that prisoners were set free and the flames of hell extinguished, and a mighty sound of music arose from heaven and earth,[3] when a human soul so pure and holy and thus filled with an almost infinite compassion, began its life in the body.

[1] Ball speaks of sacrifices of children practised in India as late as 1861, and as not wholly broken up in 1879. (*Jungle Life, etc.*, p. 608.)
[2] See Alabaster's *Wheel of the Law*, and numberless Lives of Buddha. Also *The Angel Messiah*, by E. von Bunsen, 1880; and Beal's *Romant. Hist. of Sâkya Budda*, from the Chinese Sanscrit, 1875; and *Catena of Buddh. Script.*, from the Chinese, 1871.
[3] Alabaster's *Wheel, etc.*

Nor has this life been a failure. The humanity, courtesy, mercy and brotherhood exhibited by countless multitudes of Asiatics, are without doubt largely the fruit of these teachings.[1]

But the soul of the saintly Hindoo seemed not sufficiently open to the Divine influences, or his mind was too much under the power of Indian mythology, so that the final aim and consummation of his belief lacked the simplicity and reality of Christianity. He could not offer a great hope to mankind, but only a cessation of the eternal changes of metempsychosis, and the quietude of Nirvana, where no desire or pain or pleasure or sin should ever invade the eternal repose. It has to some of his followers been the repose of annihilation; to others the peace of blessed absorption into Deity and of loss of personality; to others the eternal rest of the heavy-laden in the bosom of God. The vagueness of the hope, the lack of sublime simplicity in the teachings, the want of an overpowering faith in the "Heavenly Father," and a certain absence of consciousness of perfect union with the Infinite Spirit, will perhaps account for the failure of Buddhism in promoting the progress of Asia as compared with Christianity in Europe. The Divine Spirit was moving in the self-sacrificing Indian prince and in many of his intuitions and the truths taught by him; but not as in Christ. His truth early gathered around it gross superstitions; it degenerated into senseless idolatry; it developed useless asceticism and ecclesiasticism; it was accompanied with the most mechanical routine service, instead of a free moral and spiritual life. Buddhism has not seemed capable of urging on a steady moral and humane progress as Chris-

[1] See Miss Bird's description of the remarkable kindness and good nature of the Japanese, the effects of a faith they had given up,—Buddhism.

tianity has done. It was evidently not fit for all stages of human growth. Yet the student of moral development must ever be grateful, that so high a type of human Faith has sustained such countless millions of the human race during so many centuries. Back of all its idolatry, superstition and wild fancies, many a simple believer must have seen a noble form, bearing the burdens of mankind, most "like unto the Son of man," and through him, he has been led to worship, "ignorantly" it may be, the Infinite Father, and to work "righteousness," so far as human weakness permitted, and "hath been accepted with Him"[1] through His infinite mercy.

Some forms, too, of practical charity have sprung up under it—such as shelters for travellers, hospitals for the sick, foundling asylums, and similar charities. It is probable that the first hospitals in the world's history for diseased men and animals were founded by the Indian Buddhists. But these have not been continued to any great extent.

Buddhism entered China when two systems held sway; one of a philosophic transcendental Rationalism, Taoism,[2] and the other of a most exalted philanthropy, which neither denied nor affirmed supernatural facts, Confucianism.

In China, Buddhism besides exerting its higher influence, supplied in its corrupt form a gross superstition as a satisfaction to the religious wants of man's nature. The truths of Confucius, though in many respects elevated and filled with the sense of human brotherhood, not being connected with pure Religion, failed to stimulate to an ever-moving progress. They cultivated good will, and filial pity, and public duty, and outward propriety; but they did not offer inducements so powerful, or such personal affection for a supernatural Teacher, or the sense of God and Immortality,

[1] Acts x. 34, 35. [2] See *Johnson's Oriental Religions—China.*

sufficient to overcome human selfishness. They gave a great and ingenious race enough to satisfy present needs, and with the superstition of Buddhism, to leave it in one fixed condition. We find in consequence in China, abuses which belonged to Europe before Christianity had attained to much influence. Infanticide, despite the denials of certain authorities, is undoubtedly fearfully prevalent in certain districts; children are sold as slaves;[1] even a wife is sometimes sold; slavery is common and torture is still in use. Confucius taught blood-revenge:

"Recompense injury with justice," he said, "and kindness with kindness."[2] "He who recompenses injury with kindness is a man who is careful of his person." "With the slayer of his father, a man may not live under the same heaven; against the slayer of his brother, a man must never have to go home to fetch a weapon; with the slayer of his friend, a man may not live in the same state."[3]

From such teachings may have arisen the long continuance of "feuds" in China.

The alleged insincerity of the Chinese is thought to be due to certain instructions of this great teacher, where he permits truth to be waived.[4]

There is no such teaching of humanity by Confucius as to affect the relations of China with other countries; there is no especial respect for foreigners, and other races are looked at as barbarians. The peculiar isolation of China, as regards other countries, is no doubt partly due to this defect in this great teacher's instructions. Woman is undoubtedly in an inferior position in China.

[1] A vigorous effort has been made by the British during the year 1882 to break up this atrocious traffic by parents in their own children in Hong Kong. (See *London Spectator*, April 26, 1882).

[2] *Ana*, xxv. 26.

[3] Legge's *Life of Confucius*, p. 114.

[4] *Ana*, xvii. 20; vi. 13.

"Man is the representative of heaven," says this philosopher, "and is the supreme over all things. Woman yields obedience to the instruction of man and helps to carry out his principles. On this account, she can determine nothing of herself, and is subject to the rule of the three obediences: when young she must obey her father and elder brother; when married, her husband; when her husband is old, she must obey her son."[1]

The position of woman in China is evidently one of the causes of the sluggish condition of that country during so many centuries. Woman has apparently little important part there, either socially, politically or morally; though she has figured somewhat in Chinese literature.

And yet for the assistance of its moral progress, there has been no deification of vice in the Chinese religion, nor human sacrifice, and a most pure and elevated literature.

It is to be admitted, however, when all things are said, that we know but little about the permanent and profound influences affecting the Chinese people. It would seem that this benevolent and monotonous type of society, without enthusiasm and with many secret vices, with no element in it of great and heroic progress and suited to a certain condition of immovability for countless centuries, may be a type of the future of the civilized world, should a philanthropic Rationalism take the place of the Christian Religion.

Confucius might well be the saint of modern Agnosticism.

It may be justly urged, however, that the followers of both Gautama-Buddha and of Confucius have never fully lived up to the principles and teachings of their masters. But on the other hand it may be fairly replied, that there was not in themselves and their doctrines sufficient of the life-giving impulse, or of Divine power, to overcome the selfishness and indifference of men; so that as ages go by

[1] Legge's *Translation*, p. 103.

and civilization advances, those religious or moral beliefs no longer greatly influence their believers and are poorly adapted to the new conditions of the world. A lamentable instance of the failure of Buddhism [1] seems to be afforded by the present condition of Japan. Travellers picture the Japanese as people without religion and without hope. A current and favourite proverb is, that "the worst thing you can wish a man is to live again." As the old faith has died out there is nothing left but its unconscious effects and the habits taught by it, to stem the tide of selfishness; and the people seem given up, say very candid observers, to "licentiousness and untruthfulness," while a deep shade of melancholy settles over all. The great doctrine of Sakya Muni that the "End of Righteousness is Rest," has degenerated into the dogma that the "End of Righteousness is Nothingness," and a night of unbelief and hopelessness has fallen over a whole race.

The Arabs.—The Arabs, whom we have chosen also for comparison with European peoples, were in a high condition of civilization when Europe was in barbarism. The Spanish Arabs of the tenth and eleventh centuries, drawing their inspiration perhaps from an older civilization, were as much superior intellectually to the French, Germans, and English of that age, as are these peoples now to Afghans or Turks. In the arts and sciences and many of the best fruits of civilization, in refinement and intellect, the Mohammedans of the Middle Ages, both of Europe and Asia, far exceeded the Christian nations. They followed, too, a faith which contained one great Divine truth, the existence of one infinite and spiritual Creator, to whom all men were responsible. They abhorred idol worship, and no doubt often came in contact with nominal Christians, who were farther removed than themselves from

[1] See Miss Bird's interesting journey in Japan.

the spiritual worship taught in the Bible. But the sensuality encouraged by their faith; the cruelty and bigotry taught by it; the fatalism implied in it; the permission given in it to polygamy, divorce and slavery, proved that it was not the religion of the future, not the religion of humanity, and must come to an end. In fact, the many false and evil elements in Mohammedanism have made it one of the curses of mankind. It has spread abroad the spirit of cruelty and lust, and under it are found the unnatural vices, [1] and the oppression of subject races, and the degradation of women, which belonged to Europe before the era of Christianity. Its teachings of the doctrine of fatalism are an insurmountable obstacle to all advance, whether in civilization or morals. Man becomes the mere sport and implement of an irresistible destiny. It has in it no element of permanent social and moral progress. The science and intellect of some of the races which embraced it could not save it. It so lacks the Christian respect for the individual, and the Christian benevolence, that it never suits itself to liberal government or to advanced civilization. The splendour of Spanish and Asiatic Arab art and architecture is only seen in ruins; the science which once led the world in investigation only remains in words which have become histories, and in discoveries which have preceded modern research, while the barbaric tribes whom

[1] See *Mussulmans of India*, W. W. Hunter; and many travels in Turkey. It is difficult even to speak on this subject to modern ears, but the testimony of intelligent travellers and observers, long resident in Turkey, show that the Turkish race is eaten up with unnatural vices, and that the Mohammedan faith does not check them. See also Monier Williams, *Nineteenth Century*, July, 1882.

Williams writes the name *Muhammad*, as directly derived from the passive participle of the verb *hamada*, "to praise," "the praised one," "the glorious."

the followers of Mohammed then so despised, and who were in such low intellectual and moral condition during the Arabic period of glory, now lead the world's progress.

The difference has not been evidently in vigour of race, or in intellect, or acquired science and learning, or in language. The Turkish conquest is, of course, one reason of the change; but the great cause has lain in those peculiar and subtle influences which Christianity has gradually instilled into European races.[1]

On the other hand, Mohammedanism could not rise above its source. It illustrated or exaggerated everywhere the vices of its leader. It left behind it, whether in Spain, Sicily, Egypt, or Bagdad, anarchy, corruption, and horrible social evils. Still it is but just to note that certain Mohammedans, who have probably come under the influence of the purer Persian faith and of Buddhism, as well as of the "Soofi" mysticism, have attained to a religion as elevated and earnest, though not so humane and practical, as Christianity itself. The Divine Spirit apparently inspired such a preacher as Ghazzali.[2]

With Mohammedan races, slavery largely prevails; polygamy is permitted; divorce is comparatively free. In Arabia and on the African coast, blood revenge and feud still exist. In Turkey, unnatural vice is common; woman is in a most degraded position; divorces are almost daily;[3] and cruelty of the most horrible description

[1] Les peuples d'Orient sont tellement imbues de l'idée de la force, ils sont tellement façonnés depuis des siècles à la soumission, qu'ils ne comprennent pas au juste la puissance du droit.—*Des causes de la decadence, etc.* Acad. d. Sc. etc., 1877, p. 193.

[2] He appeared in the eleventh century. See the beautiful translation of his *Alchemy of Happiness*, by H. A. Homes, 1873.

[3] Rev. Dr. Washburne, President of Robert's College, Constantinople, assures me that he has known Turks to divorce their wives day after day. It is a very general practice.

tion towards prisoners or those conquered is well known. In Arabia, a favourite proverb is "The threshold weeps four days when a girl is born.[1] Another Arabic proverb teaches that "to send women beforehand to the other world is a benefit," and that "the best son-in-law is the grave." Wife-beating seems taught in the Koran,[2] as it is the custom in Mohammedan countries, and wife murder is not uncommon in Syria.[3] The modern testimony as to the effect of Mohammedanism on the Arabs of Syria is overwhelming; we have space for but few quotations. Says a convert,

"How few of the hundreds of thousands of women in Syria know how to read! How few are the schools ever established for teaching women. Any one who denies the degradation and ignorance of Syrian women, would deny the existence of the noonday sun. Do not men shun even allusion to women, and if obliged to speak of them, do they not accompany the remark with *'ajellak Allah*, as if they were speaking of a brute beast or filthy object? Are they not treated among us very much as among barbarians?"[4]

An article from *Le Liban*, an official journal of Daud Pasha, Governor of Mount Lebanon, printed in 1867,[5] says,

"So in former times, the man was the absolute tyrant of the family. The wife was the slave, never to be seen by others. And if in conversation it became necessary to mention her name, it would be by saying this was done by my wife, 'ajellak Allah![6] But now there is a change, and woman is no longer regarded as worthy of contempt and abuse; and the progress being made in the emancipation and

[1] Jessup's *Women of the Arabs.*

[2] Sura iv. "But chide thou those for whose refractoriness ye have cause to fear . . . and scourge them."

[3] *Jessup.*

[4] Essay of Mr. Bistany, read before the Beirut Literary Society 1849, quoted by Mr. Jessup, p. 159.

[5] *Jessup*, p. 178.

[6] The Irish phrase is parallel, "Saving your Reverence!"

elevation of woman is one of the noblest and best proofs of the real progress of Lebanon in the paths of morality and civilization."

"In Algiers," Seguin says, "the Mohammedan invariably buys his wife; he pays a price for her to her family."[1]

"When an Arab woman marries, she is sure only that she will be a slave; but who can tell how many domestic tortures she will have to endure?"

The conception of God in the Koran is not of a father, but of an inscrutable despot. "Verily," says this book, "there is none in the heavens and on earth but shall approach the God of mercy as a slave," and the duty is laid upon the faithful of being the agents of God's wrath on those who believe not.[2] The two great Christian ideas at the base of modern progress—the fatherhood of God and brotherhood of man—are wanting in Islam. The Christian ideas at the basis of modern international law are unknown to Mohammedanism. War is the ordinance of God, and public faith need not be kept with infidels or aliens.[3]

[1] *Walks in Algiers*, p. 517.

[2] See Osborne's *Islam in Arabia*, p. 27.

[3] Hedaya ix. Mill's Koran, p. 330. "Oh, Prophet! stir up the faithful to war; if twenty of you persevere with constancy, they shall conquer two hundred; and if there be one hundred of you, they shall overcome two thousand by the permission of God, for God is with those who persevere. It hath not been granted to any prophet that he should possess captives, until he had made a great slaughter of the infidels on the earth" (Sale's Koran, chap. 5). "When ye encounter the infidels, strike off their heads until ye have made a great slaughter among them. . . Verily if God is pleased, he could take vengeance on them without your assistance; but he commanded you to fight his battles that he might prove the one of you by the other. As to those who fight in defence of God's true religion, God will not suffer their works to perish; he will lead them into Paradise of which he hath told them. Oh! true believers! for his religion he will assist you against your enemies" (*Ibid.*, chap. 47).

It should be noted, however, that Mohammedanism encouraged kindness to the poor. Alms are "a loan to God"; they "deliver from hell and secure Paradise." The first lunatic asylums are said to owe their origin to this Faith. It taught also great kindness to animals, and admitted them to a future state of existence.

We should not forget also that Mohammed attempted to reform his times by suppressing infanticide, inculcating temperance, and prohibiting gambling and divination.[1]

It can hardly be urged that climate alone has caused all these differences between the non-Christian and the Christian peoples. The Christian religion, looked at materially, is a product of a warm climate. Some of its purest and noblest disciples, who still profoundly influence the world, were natives or residents under almost a tropical sun. Its great conquests indeed have been won among northern races; but with them it had especial obstacles. owing to the northern predisposition to intemperance and the greater struggle for existence necessary in colder climates. On the other hand, two of these faiths, the system of Confucius and the religion of Mohammed, cover many regions where the climates are severe and cold. The great standard-bearers of Mohammedanism—the Turks—were a northern and vigorous race, and the Arabs have none of the habits of a tropical people; indeed the latter are closely allied to the founders of Christianity—the Jews.

A tropical climate undoubtedly tends to degrade the position of woman, in relaxing her energy and exposing her purity. But this evil is no greater than the tendency of a northern climate to stimulate intemperance. Christianity is adapted to restrain and remove both evils. It may be true that for this Faith some races are more fitted

Monier Williams.

than others; but all races can be improved and perhaps regenerated by it.

Buddhism and Brahmanism have substantially failed of a great moral progress in India, China, and Japan; they are proved not to be the absolute religions. Confucianism has produced no great progress in China; and Mohammedanism has utterly failed everywhere except with certain barbarous tribes in Africa.

It would not perhaps be reasonable to argue from the imperfect fruits of these religions, that they were failures. It might fairly be alleged that they had not yet existed during sufficient time. But we can urge that, from their very nature and structure, they are not fitted for all phases of human development. They are not universal and absolute religions, and adapted to bring about the highest humane and moral progress.

Were the world thoroughly and consistently Buddhistic or Confucian, it would be anything but a world fitted for the highest conditions of human advancement, or for the ideals of the mind. It could not long live up even to its own principles, as it would lack the life-giving power afforded by Christianity.

CHAPTER XXXVII.

OBJECTIONS. RESUMÉ OF REFORMS BEGUN. THE FUTURE OF MANKIND UNDER CHRISTIANITY

THE points necessary at the close of our investigation to consider, are: whether, supposing the Christian system to prevail and to thoroughly imbue individuals and society in all directions, this would form the highest type of character and the final and perfect development of mankind; whether if all the world were Christian, it would be the world of our ideals.

It is often and naturally objected[1] that the Christian character of the future will be deficient in the courageous and manly principles, and will not have been tried in the fiery furnace of discipline of the past—namely War.

But it should be remembered that the natural conditions of the world, the struggle with the great forces of nature, will always cultivate physical courage; and the eternal necessity in human society of defending the weak, rebuking wrong, standing by the unpopular cause, and even incurring shame and loss for the truth, will always train moral courage. Even if *æons* hence, society should approach its complete development, the inevitable accidents and chances of life would continually call for the highest kind of courage. Even now in modern wars, there is little demand for savage pugnacity or a bloody revengeful temper, but

[1] See Renan, *Marc Aurèle*, p. 595. . . . mais une société de parfaits serait si faible!

rather for a cool brain, unshaken nerve, the will which defeat cannot break, and that state of mind which simply disregards death and wounds where duty lies before. The courage most needed in modern battles is simply a readiness to be torn in pieces by machinery at the post of duty. Great numbers of persons fight through a campaign without ever seeing a personal opponent.

As civilization advances the moral courage will be more and more demanded; and physical nerve and resolution will be gained, without exciting the violent passions, by struggles with nature. The unconquerable determination to overcome difficulties, the contempt of death, the scorn of cowardice as worse than death, the heroism which could throw away life like a straw for victory—which have been the crowning gains and glories of war in the past—might easily be shown by men in a world which had grown beyond war in their struggles with nature, with the tremendous forces around them, and amid the inevitable accidents and chances of life.

The Christian ideal has always been far in advance of past ages; it is still beyond our present condition. Men can only make a compromise between it and the necessary demands of the times. But the compromise continually approaches, century by century, the original ideal. It would be difficult now (though not impossible) for an individual to conform his life to these higher principles and survive in the struggle for existence. As each century passes it becomes easier. It would be in this age apparently impossible for a nation to conform to these principles, and survive. But in each century the nations approach them more nearly. As society advances, the Christian type of character will become more suited to the surrounding conditions, and there is no reason to fear, that man under this moulding, will be shaped in any weak or unmanly form.

All that a barbarous and bloody past gave of vigour and courage, will be given by a future of peace and humanity under the unavoidable dangers and chances of life.

A similar objection is that the Christian type of character would in its unselfishness unfit men for the struggle for existence, and that the followers of this morality and Religion would be over-reached by the "children of this world," and finally worsted in the contest. But the Christian teachings do not require to love others more than self, but as ourselves. And the highest Christian benevolence teaches that the selfishness of others must sometimes be resisted for their sake, even more than our own. It is true that as society and trade are constituted now, a complete living after the Christian ideal is difficult, but with each generation, a greater harmony arises between the conditions and this type of character. Even now it is not certain that a society completely governed by the Christian morality might not exist successfully amid the selfish and jarring interests of the world. It is easily conceivable that the world might advance with all its present progress, and yet all societies be inspired by these elevated principles. There is nothing in the Christian ideal which unfits a man for the utmost activity and vigour; and if this activity regard the rights of others and consult their interests, it will not be the less likely to attain its objects. At all events, with each advancing century, this type of character will be more fit for its conditions and surroundings.

It has often been urged in these pages that the teachings of the great Master were in no way inconsistent either with modern advance in rational accumulation of wealth or in institutions of political liberty, though objections urging this have often been made against this moral system.[1]

[1] See even so candid a writer as Laurent (*Hist. du Droit des Gens*) and Renan, and others.

The type of character moulded by this system is essentially the self-controlled, the earnest, the one careful of the claims of others and responsible to a higher Power. Such a character under modern conditions must be industrious and saving and laborious. Idleness, dependence, self-indulgence or extravagance would equally be inconsistent with its ideals. It is true that the teachings of Jesus set themselves against an excessive pursuit of wealth, and to His immediate disciples, enforced communism of goods. But, considering Oriental metaphors and the peculiar conditions which surrounded our Lord, it may be doubted if He urged for all men anything more than a greater distribution of property than had ever been known. The Apostles apparently thus interpreted His words. There is in His teachings, an ideal in regard to property which is far in advance of the social progress of mankind. A future, in which, after all reasonable tastes and wants of every kind had been satisfied, accumulation was entirely devoted to the public good, would not be one with which political economy has reason to quarrel or which would discourage industry. It would offer to labour the highest reward which the most benevolent nature could seek. Nothing like dependence or idleness is a legitimate fruit of Christianity. The monasticism of history has not come from Christ, nor is that charity which degrades the sufferer in helping him and which sows other evils in curing the nearest, His teaching. The drift of all His words is to seek one's happiness in the ultimate highest happiness of all; to love others as one's self, and God above all. The true Christian cannot knowingly do a man good in a way which will injure him ultimately, or will injure society.

The peculiarity of Christ's teachings, as has often been said, in regard to political matters, was that He left them entirely on one side, but threw in a principle into human

society which was destined in after ages to overthrow or modify all existing institutions and governments. The value attached by Him to the individual, has affected all modern political systems and is destined to do so more and more. The bond of humanity He taught is already connecting persons under various forms of government, and is certain hereafter to reform governments and the relations of nations.

It is true that the early Apostles, under the peculiar conditions of the Roman empire at the time, taught a submission to authority which cannot be a universal duty. But the essential character exemplified by Christ contained no elements which form the instrument or the victim of tyranny. A man trained to live in the great Task-master's eye, looking at all men as equal before God, holding beliefs which no human authority could give or take away, determined to render to all their dues, and habitually looking beyond human ranks and distinctions, could not in the nature of things be long a supporter of despotism whether in church or state. The Christian is essentially a believer in individual liberty whatever be the form of government; the tendency of the Christian system is to permit all men to enjoy the utmost development of their faculties, and to oppose unlimited authority. The highest development of a controlled liberty to every man and every woman, is the natural fruit of the teachings of Jesus.

As a collateral evidence of the truth of this position, it may fairly be urged that those races and peoples whose members attempt (though only partially) to guide their lives by His direct teachings, and who, however imperfectly, seek, or profess to seek, to model themselves on Him, are those who have most developed free institutions.

The opposition in the past of the nominal expression of

Christianity—the Church—to Science is indeed one of the apparent objections to this system which has had most weight.

It is undoubtedly true that a false theory of inspiration and a false interpretation of the scriptures, together with the spirit of bigotry, have thrown the religious bodies often in contest with science. But the teachings of the Master are not responsible for this. There is nothing in them which is opposed to the freest investigation and most thorough research. On the other hand, the humility and love of truth taught by Him, are favourable to the pursuit of truth and would tend to make the scholar more thorough and earnest.

The faith in Supernaturalism cannot be urged as opposed to Science, for the believer holds also to a system of laws in a sphere higher than that which science searches out, and to him also there is a "continuity" in the universe. The victories of science are won in a domain which faith scarcely touches; and from all that appears, a most devout believer in the supernatural might lead the researches of modern investigation in nature. To him indeed there would be an intelligent Power behind nature, and a light shining through the mystery of the universe, but all known laws of existence could be as closely and impartially followed out, as by the most sceptical materialist. Many of the great investigators of nature in all ages have been religious.

An objection of greater weight to the Christian system is that, if of supernatural origin, or if the ultimate system of morals, it has been extraordinarily slow in imbuing the world with its principles and that some of the most terrible evils of society still survive. The reply has often been made to this objection, and to the philosophic mind would seem a not unsatisfactory one, that with regard to all

agencies, whether physical or moral, shaping this world, long periods of time seem necessary. Whatever be the theory of the universe, immense time appears indispensible for the working out of any of the great forces. It is no more inconsistent with supernatural Power to be during a thousand centuries slowly remoulding through natural influences the moral world, than during a like period to be gradually remoulding matter under the laws of Evolution, or to be laying the foundation for future kingdoms of life during uncounted centuries under the natural forces.

All that we need to show is, that *here is a moral Force producing certain definite though small results during a certain period of time; and of a nature adapted to produce indefinite similar results in unlimited time.* If these two premises be allowed of the Christian system, we can pronounce it safely the ultimate system of morals.

The first of these, it has been the object of this volume to demonstrate. We have endeavoured to show what in a few centuries the Christian System has brought about; what changes it, in harmony with other influences working secondarily, has effected, what sufferings mitigated, what evils removed, what abuses reformed, and what new bonds of sympathy and humanity it has joined.

Before showing what it is adapted to accomplish, we must point incidentally to certain obstacles, outside of itself, which have obstructed its progress in the past.

It will be remembered that this Religion and morality have never acquired a full control over mankind. The great historical blunder of the Church—the early union with the State—lessened and crippled the moral influence of Christianity in Europe. The too speedy and superficial conversion of the masses in Europe, left a wide-spread paganization, especially of the peasantry. The influence

of state churches, of wealthy hierarchies, of political priests, and all the corruption and bigotry of the Church in the Middle Ages, tended to counteract the true working of the Faith. No doubt in modern days, the worldliness of the Church has equally interfered with the legitimate influence of this system. Even among its followers, the effects and inherited tendencies of ages of barbarism and unrestrained selfishness, still survive in mental habits and social customs. War is a relic of unchristian times, and is in many forms utterly opposed to the Religion of Love. Yet the power of this kind of co-operation and the evil passions engendered affect the minds of all believers, and but few have escaped as yet its influences.

So as regards the more selfish competition of trade, the teachings of Christ, even with His nominal followers, have reached but a few. Then, when we consider the relations of bodies of men, we find that in all governmental connections, these instructions have had but the feeblest influence, and that this century only has seen the first important application of Christian principles to international relations. We may therefore fairly say that Christianity has merely begun its workings in the world, and many hundred centuries must pass before it will show any important part of its true influence.

Evolution.—But what Christianity is adapted to effect may be best seen from examining the laws which seem to govern all human development. In the struggle for existence, that individual or that race of men is the most sure to survive, which is the most fitted for its conditions, physical, mental, and moral. And as every faculty and power develops, and the relations of human beings with one another become more complicated, that race will lead the world which is most in harmony with the most advanced and refined conditions. The elements which especially govern the relations of men to one another in their highest associations, are sympathy, justice, the love of others' happiness, the control of selfish tendencies, and the aiming at universal good.

In lower relations, we see in the history of the past, that such races as violated habitually ordinary morals, and were greedy of wealth, indifferent to injustice, tyrannical to the weak, corrupted by pleasure, weakened by unnatural passions, oppressive to the masses, or eager for mere conquest and unjust glory, finally were overthrown and perished. Their victors or survivors who took their places at first were perhaps little better than their predecessors, but they had gained the victory by some moral advantage, and this, acted upon by favouring circumstances, transmitted and increased by heredity, continually advanced these races.

The races with lower moral development went to the wall, and those with higher, grew in moral power. Still this was not a steady moral advance, as many of the circumstances were not favourable to it; and temporarily a victory in the struggle for existence was often given to a race lower in the moral scale. But on the whole and in a long period, vice weakens the physical power of a nation; injustice raises up enemies internal or external; excessive luxury saps vigour; selfishness repels allies; and in one form or other, a low moral standard as compared with the prevailing, weakens its resisting power, and causes it finally to succumb. As we rise to higher relations, we can see that as man develops and society advances, the races in which there is the highest development of sympathy, of benevolence, of sexual purity, of truth and justice, will tend to be the strongest in body, the most closely united, the most prosperous, the most free, the

most influential on inferior races, and the most powerful as attracting other members to themselves. All the destructive influences of the world will be less operative on them. The death-rate of such a race will tend to be the lowest possible; the physical vigour the highest; the inequalities of fortune will be the most compensated for; the trade and intercourse with all other nations the freest; the laws and social customs will the most approach perfect justice and humanity; all the resources and abilities of the most favoured members will be habitually used for the most unfortunate, but only so far as to strengthen them. The power of such a race will far transcend anything hitherto known, for each member is permitted the utmost possible development of all his faculties, and vigour of intellect is almost sure to accompany great moral advance.

In the struggle for existence, a perfected race like this will be as much beyond the races which history has known, as the Aryan races now are beyond the African. It will tend to supplant them. It will win the fruits of nature first. It will absorb from them. It will resist destructive influences better. If driven to physical contest, it would conquer them; it would inevitably lead all other races. Though opposed to war, and living habitually in benevolence, such a people in the defence of rights would be almost irresistible. But its final triumphs would be like those of civilization—gentle, profound, and full of blessing to all others. Men would follow such a nation, as they have followed prophets and saviours. It would be the centre of the higher life of the world.

The currents of Evolution plainly set towards such an end. The struggle for existence, heredity, and the survival of the fittest, must give the final triumph in the life of men to the races of high morality; to such qualities as sympathy, unselfish benevolence, purity, justice and truth

These are alone suited to the highest development of society, and the most complete and perfect working of each individual with every other. Selfishness, vice, injustice, violence, hate, and lust, tend to weaken, to destroy, to disorganize, and finally to cause defeat in the struggle.

A profound and acute writer, a Positivist, Mr. Fiske, has somewhere said that the drift of society under Natural Selection and the other forces of Evolution is "towards weakening the power of selfishness, and strengthening the power of sympathy."

If it be objected that this theory leaves out of view one of the great and solemn facts of life—the drift toward evil or inherited and accumulated tendency to depravity—the reply is that with the race we have imagined, Inheritance may eventually be turned toward good. After hundreds of generations of human beings, guided by such principles as we have indicated, and inspired by the Divine Spirit, the immense power of heredity reduplicating any tendencies physical or moral would be accumulated in favour of benevolence, purity and truth, and would open the mind to spiritual and moral truth even from infancy. No human knowledge can measure the results when at length under Divine influences that mysterious tendency towards evil which has so tormented earnest thinkers—that principle of heredity, reduplicating in its power at every new generation—shall be turned towards good, and the first unconscious impulses be in the direction of unselfishness and of religion. Then the "gemmules" which may have descended for a thousand generations, whether containing physical forces or influencing moral tendencies, will be preponderatingly those which make the body pure and self-controlled, and draw the soul towards goodness and God.

It need not be said that Christianity is adapted to form such a race as we have described above. Its tendency is to remove all the destructive agencies. It teaches the brotherhood of man and the priceless value of each human being, and therefore undermines serfdom and slavery, which have overthrown so many commonwealths, and steadily elevates the masses who make the strength of a state. It urges universal love and justice, and therefore leads men to aid one another in every possible way, to assist by wise charity, to remove unjust burdens, to take off the trammels on trade and intercourse, to pass just laws and abolish ancient abuses. Under its teachings of "doing to others as we would have others do to us," and "loving our neighbours as ourselves," sympathy and unselfish benevolence are the controlling elements in this higher condition. It opposes and must finally do away with WAR—perhaps the greatest curse on mankind. In defending marriage and presenting the highest ideal of purity as a religious obligation, it strengthens physical power and diminishes the great offence of women, and will at length remove it. It binds families together, and tends thus to preserve the greatest physical vigour. It teaches temperance and moderation, and by religious motives resists the fatal appetite of modern days—that for extreme alcoholic stimulus.

In presenting the dignity of man it tends to root out the degraded character of Pauperism; and by teaching that benevolence must ever regard the highest welfare of the recipient, it prevents indiscriminate alms-giving. Trade under it will be governed by honest and unselfish principles. Under the guiding words of the Master, a new principle of the distribution of wealth will prevail in the completed society of the future. Men will hold riches for all. The surplus beyond reasonable wants and desires will be continually distributed in means of education, of wise charity, and of public improvement. Possibly the laws themselves will forbid accumulation beyond a fixed amount; or all such matters will be left to a Christianized public opinion. Vice, lust, violence, cruelty, neglect of offspring, robbery, thievery and all the practices which disorganize a community will be resisted by the most powerful motives which can work on the human mind. That which especially ensures the future of a race—its physical and moral care for its young—is especially encouraged by this Faith. Under it sympathy and unselfish benevolence are stimulated to their utmost. It offers all the conditions which Evolution requires to form the perfect race or society.

But it does more than present a system of ultimate morals. It throws in a Force which Evolution does not reckon upon, and which hastens on all the currents for good, working in human life. It offers the love for an unequalled character, for a divine Person who embodies all abstract morality: it throws about Him and His teachings, the halo and mystery of a Religion: it presents to the individual struggling for a higher morality, hopes and fears which take hold of all that is grand and awful in the universe. It even makes morality only the blossom and fruit of the love it would implant for this transcendent Being and of the faith in unseen and eternal realities. In loving the highest excellence as personified in CHRIST, the man unconsciously loves the happiness of all created beings, and is planted in the highest morality.

We have thus attempted to show in this volume, what improvements in human condition, and what assistance to humane and moral progress have originated in a comparatively brief period, from Christianity. We have inferred from these changes which it has caused during a few

centuries, what it will probably bring about in a very long period. From its own nature too, we have reasoned that Christianity is adapted to produce a perfect system of human society. Nothing better has been or can be conceived by the mind of man, to make man better or happier. Is it not then reasonable to infer that the Christian Religion is "the absolute and universal Religion:" that its Founder, JESUS the CHRIST, was substantially what he claimed to be, and that His revelation of the future life may be received with the same confidence, as His instruction about the present.

A Being who can lead for all future ages, the moral and humane progress of humanity, may well claim a respect for His words which no other being can demand. The "Son of man" may well be the "Son of God:" the *Gesta Christi* may become the *Gesta Dei*, and He reveal not only Life but Immortality to man

SUPPLEMENTARY CHAPTER.

THE INFLUENCE OF CHRISTIANITY UPON ART IN THE MIDDLE AGES.

SOME sceptical writers of distinction and even of considerable impartiality have spoken with depreciation or contempt of the share of the Christian religion in the æsthetic history of the race; and the position of the early Iconoclasts destroying statues and images, or of the Catholic Savonarola burning works of art, or of the English Puritans defacing the Episcopal churches, has been supposed to represent that of Christians generally towards Art.[1]

The "Religion of Sorrow" has not been thought favorable to those arts which minister to pleasure, and the Faith which teaches self-denial, the crowning event of whose history is an ignominious and painful death, could not, it was believed, look with sympathy on whatever belongs to the fulness and luxury of life. But in this theoretical view of Christianity were left out of sight its ideal and dramatic elements. Its story from the manger-birth to the death on the cross is full of poetry and scenic effect. Childhood and womanhood are both glorified in

[1] Renan however takes a broader view: "Jamais le problème de l'art religieux n'a été plus complètement résolu qu'au moyen âge, en ce sens qu'à aucune autre époque de l'histoire de l'humanité la religion ne s'est traduite au dehors par un ensemble de formes plus imposantes, plus rapprochées à la Divinité. (*Nouvelles Études.*)

its narrative. Its truths take hold of the noblest aspirations and most heroic purposes in this life; and bear on the grandest possibilities of the soul in the life to come. Whatever is sweet in humble affection, whatever is beautiful in purity, or heroic in sacrifice, or elevated in aspiration, or unquenchable in hope, can be painted on the canvas or chiseled in marble or built in imperishable stone by him who is inspired with its teachings.

In point of fact the two most striking fruits of the feeling for beauty and harmony known to man since the days of the highest Greek Art, have come directly from the religious sentiment in Christianity acting upon the temperament of the Teutonic and Romanic peoples. The power of Christ over the human mind shows itself in different forms in different ages. His influence on the imagination, the dramatic faculty, and the sense of beauty may not perhaps be the highest form, but it is one.

There was a certain portion of the Middle Ages, a century or century and a half, from the middle of the fourteenth to the early part of the sixteenth century —the most brilliant in human annals—when this power was exerted on the European mind as it never had been before and doubtless never will be again in the history of the race.

The great religious and æsthetic conception of the Middle Ages was undoubtedly that of the holy *Madonna*. The Madonna, so far as we can recall, has no exact counterpart in Classic or Pagan Art. It is the conception of the glorified woman, whose passions, affections and whole nature have been purified and beatified by suffering and devotion, by the pangs of earth and the joys of heaven. It is the wife unstained by sin, hearing in sweet humility

and unspeakable joy from the Infinite Spirit, that she is to bear in her bosom the Hope of the human race; it is the mother first looking upon the face of the blessed Infant, who is to be the joy of the whole earth; it is the beatified woman, rising on the rose-tinged clouds, every feature of the angelic face moulded with awe and devotion and the sense of union with God, holding the divine Child, whose deep and solemn eyes seem to predict the career of suffering, shame and agony before Him; or it is the mother bereft, bending in pain over the lifeless form of the beloved Son, but with eyes that look through tears to the triumph of His spirit on the earth, and to the glad re-union in Heaven.

In all the best schools the Madonna is the highest Christian conception of woman, of woman indeed exalted and beautified by being chosen to be the mother of the Lord; but woman softened by suffering, elevated by consciousness of divine union, bearing the burdens of humanity as her Son had done, purified of human dross by love, sharing human weakness but made almost superhuman in having been permitted to bring forth into the world the Holy One.

It is true that this pure and elevated conception of the mother of Christ ran at length into an extreme, and led to a worship of the human rather than the divine. But let any one stand before such a picture as Raphael's Sistine Madonna, and ask himself whether Art could give purer or higher or more religious conceptions. As he gazes on that graceful and noble figure with floating drapery, "rising on the empurpled cloud," the sweet and solemn face bearing on it the shadow of life's sorrow and of future pain, the features so pure and beautiful that he involuntarily says to himself, "such and not more beautiful be the angel faces that shall meet

me in the blessed life beyond!" and as he feels the wonderful harmony of the painting, the effect which the very contrast of the earthly faces of the Pope and Santa Barbara make to the spiritual Madonna, and as he looks into the deep, earnest eyes of the Infant Christ, who seems gazing into the vistas of eternity, he feels the full effect of the highest religious thought and dramatic representation. He does not worship the Madonna. He has a conception of divine purity, of infinite beauty, of the possibility of human beatification and purifying in the light of HIM who is the soul of the universe. He prays for purity. He worships GOD.

No temple or church or religious emblem could produce such a profound spiritual impression on the beholder. No other religion, no Classic or Oriental Art has given to the world such an ideal of woman. We know the elevated and heroic ideal of the Greeks; the stately and pure conception of the Romans; but no statue in ancient Art thus speaks of almost superhuman sorrow, of purity and affection, of intense aspiration for goodness, of the love which beareth all things and of adoration of the divine. The Madonna of the purest schools of the Middle Ages is a gift of Christianity, working on the Teutonic and Italian temperament, to the treasures of beauty of the human race.

From causes which we need not here investigate, the century beginning with the middle of the fifteenth was conspicuous for a new life in Christian thought and feeling, and this movement, though not reaching every branch of human society, yet acted especially on the sense of beauty and the dramatic power in painting and architecture. The story of Christ and the Apostles, the doctrines of His Faith as relating to the unseen and the future life, and many of His highest moral

truths, gained a new power and freshness. In some directions men believed as they had not before since the early Christian ages.

The Italian monks preached with great power to vast audiences the eternal truths of penitence and duty to God. Men were aroused in every direction to their duties. The sense of sin and of the higher obligations was intensely stimulated. Italian monks,[1] like Sartiano, Capistrano, Da Lecce, Bernardino of Sienna, and others, held large assemblies in rapt attention, as they spoke with thrilling eloquence of sin and repentance. Savonarola thundered at the conscience of the masses in his beloved Florence, scourged the vices of the Church and the civil rulers, and pleaded for the purest religious feelings in Art. Luther preached to increasing multitudes the highest truths of Christianity, and drove home to the conscience of men the sense of sin, the need of a Divine Redeemer and the hypocrisy of outward ceremonial with the heart corrupt and selfish. Yet with all this went on a corruption in the Church and in social life, which showed how partial and incomplete was the work of the Faith once preached in Judea.

Still its action on the sense of beauty was most striking. A century and a half previous to this period, Cimabue (1302), in Florence, had painted a Madonna with such freshness of religious feeling that Vasari relates it was carried to church in a solemn procession, followed by the whole population, with such rejoicing that the quarter is still called *Borgo Allegri* (Joyful Quarter). His illustrious pupil, Giotto (about 1300), has been called "the father of Christian Art," and the influence of the latter was felt for centuries in Italy in the expression of religious emotion. Of this school Vasari says: "We

[1] Burckhardt, *Renaissance in Italy*, ii. 264.

painters occupy ourselves entirely in tracing saints on the walls and on the altars, in order that by this means men, to the great despite of the demons, may be better and more devout."[1]

Of Giotto, Vasari declares that "he was no less remarkable as a Christian than as a painter."[2] Religious Art had been encouraged by popes and synods. Pope Gregory the Great (1073) had proclaimed: "Wherefore let pictures be employed in the churches, that those who do not understand letters may at least be able to read on the walls what they do not read in books" (Ep. 105). The Synod of Arras (1205) decreed that what the illiterate cannot behold in the Scripture, that they should contemplate in the features of pictorial art.[3] The painting (miniature) in manuscripts and on vellum was carried to a high degree of perfection in the convents, and in France religious art was beautified in the twelfth century by the use of painting on glass—a discovery, probably, of Byzantine origin. A curé in Troyes painted three windows of a church to serve as catechism and instruction to the people (pour servir de catéchisme et d'instruction au peuple).

But the greatest impulse to the progress of Christian art was given by the voluntary associations of earnest-minded painters, sculptors, and masons through Northern Italy. These workingmen and artists were filled with religious emotions. Vasari relates that one fraternity of painters (1350) held periodical meetings to render praise and thanks to God (per rendere lode et grazie a Dio). Rio says, "The studio of the painter became an oratorio." The Florentine associations are said to have laid great stress on personal piety and minute acts of devotion; the Siennese insisted more on the religious vocation of art; all were fraternities for mutual moral and religious edification. The painters of Sienna openly declared that "we, by the grace of God, make manifest to rude and ignorant men the miraculous events operated by virtue of and in confirmation of our holy faith."

[1] Piu divoti et migliori.

[2] Non meno buon Christiano che eccellente pittore.

[3] Illiterati quod per Scripturam non possunt intueri hoc per quædam picturæ lineamenta contemplantur.

A wonderful personality had lived and acted in a little village of Umbria, Assisi, in the thirteenth century. He had been truly inspired with love of man and of God. St. Francis' story has received the usual setting of legendry, but there was beneath it a spark of the divine fire. This has kindled not only the monks and preachers of Italy, but affected successive generations of artists and sculptors. He who most felt this inspiration has become the great representative of Christian art in all centuries—Fra Angelico of Fiesole (1387–1455). Vasari says of him that he never could have reached such heights of art but for his devoted and holy life (uomo di santissima vita). In his funeral oration he declares: "Some say that Fra Giovanni never took up pencil without first having recourse to prayer. Whenever he painted a crucifixion the tears streamed down his cheeks, and in the countenance and attitudes of his figures it is easy to perceive the goodness of his soul and his great love of the Christian religion." Again, "He shunned altogether the commerce of the world, and, living in holiness and in purity, was as loving towards the poor on earth as I think his soul must be now in heaven. He worked incessantly at his art, nor would he paint other than sacred subjects. He might have been rich, but cared not to be so, saying that true riches consisted rather

in being content with little. He might have ruled over many, but he willed it not. . . . Dignity and authority were within his grasp, but he disregarded them, saying that he sought no other advancement than to escape Hell and draw nigh to Paradise. He was most meek and temperate, and by a chaste life loosened himself from the snares of the world, ofttimes saying that the student of painting hath need of quiet and to live without anxiety, and that the dealer in the things of Christ ought to dwell perpetually with Christ." He never yielded to the sensual tastes of the age, or to the demands of the great patrons of his art, the Medici, who ordered the free and licentious nude subjects of antiquity. After spiritual communings he seized the pencil, and believed his pictures to be inspirations. "As he was devout in heart, so he formed his figures full of devotion."[1] Of these lovely creations, faces filled with an unearthly sweetness, reflecting the peace which passeth understanding, lit with a light not of earth, humble as in the presence of the Ineffable One, harmonious and beautiful as if Heaven shone around them, all succeeding ages have agreed with the historian that "the spirits of the blessed in heaven could scarcely be otherwise."[2]

The epitaph of the saintly artist expresses his spirit, and that of the highest Christian Art of the fifteenth century: "To me be it no glory that I was as a second Apelles; but that all my gains I laid at thy feet, oh Jesu!"[3]

[1] Sicut ipse erat devotus in corde, ita et figuras pingebat devotione plenas.

[2] Spiriti beati non possimo essere in cielo altrimente.

[3] Non mihi sit laudi quod eram velust alter Apelles; sed quod lucra tuis omnia, Christe, dabam!—*Vasari.*

A like spirit is seen in the Bologna School. Lippo Dalmasio (at the end of the fourteenth century) is related never to have commenced painting without a severe fast the evening before and partaking of the sacraments during the same day, that his imagination might be purified; so that Guido said of him, it was impossible for any modern artist—no matter with what talent or study—to unite so much holiness, modesty and piety in one figure.[1] In his later life, he never painted for money but only to give expression to devotional feelings—he himself being supported by his convent.

Savonarola.—This remarkable reformer and preacher of the fifteenth century had a marked and extraordinary influence on the Christian Art of North Italy, and on the artists personally. He especially denounced the pagan and licentious influences which were degrading painting and sculpture in his native land. "Ye make the Virgin appear like a prostitute!"[2] he said in one of his impassioned addresses to those who were corrupting Art. The decline of Art, he declared was owing to the decline of Religion. "Your ideas are stamped with the grossest materialism. . . . It is in something beyond the visible that we must seek for the essence of true Beauty. The more nearly the creature participates in and approaches to the Divine Beauty, the more beautiful it is, because the beauty of the body depends in great measure on the beauty of the soul." This idea he repeats in innumerable forms. "Imagine what must have been the beauty of the Virgin who possessed such sanctity—sanctity that shone from all her features. Imagine how beautiful was Christ who was God and man!" St. Ambrose had said

[1] Rio, *De la Poesie Chrétienne*, etc., p. 185.

[2] Voi fate parer Vergine Maria vestita come una meretrice.

before of the Virgin that the appearance of the body was an image of the beauty of the soul.[1]

Savonarola adds, "It is related that at the sight of the Virgin, at the sight of her great beauty, all men remained stupefied; but such was the sanctity that shone in her that she never inspired an evil thought; every one felt himself inspired with respect for her. . . . If natural virtues like prudence, justice, force and temperance are ornaments of the soul and contribute to render it beautiful, how much more beauty ought to belong to supernatural virtues, such as faith, hope and especially charity. Love God first, then your neighbor, and your soul will be beautiful.[2] Every painter paints himself; that is to say, he realizes his conceptions. . . . Carnal and debauched men have the intellect obscured."[3] "Love is like a painter. The works of a good painter charm men so that in contemplating them one remains in suspense; sometimes one is ravished in ecstacy and one forgets himself. This is what the love of Jesus Christ does in the soul. . . . The beauty and the charm of similar paintings take captive all the forces of the soul, and make it despise riches, honor and all earthly goods."[4]

These words of the great preacher of the Middle Ages show what was the ideal of its highest Art in picturing the Madonna. She was the earthly image of the divine beauty.

Savonarola's influence was deeply felt by Lorenzo di Credi, early in the sixteenth century, and especially by Fra Bartolommeo, who has shown in his works so beautifully the aspirations of Christian Art. Ridolfo Ghirlandajo (about 1500) and Michele di Ridolfo transmitted still farther the principles of the great Christian teacher; and the quaint and devout Botticelli (1480) was so affected by his words and life that at his death, as Vasari relates, he gave up painting and resolved never to touch pencil again.

[1] Ut ipsa corporis species simulacrum fuerit mentis.
[2] *Les illust. d'écrits de Savonarola par G. Gruyer*, (Paris, 1879) p 19.
[3] *Sermons on the Psalms.* [4] *Ibid.*

Michael Angelo in his grand and solemn themes is also believed to have shown the deep impression of the great reformer's words. Savonarola was as a Hebrew prophet in a corrupt age, and the imagination of the great artist was equally filled with solemn visions and the thoughts of the "Judgment to come."

In Venice, Art kept its religious character later than in Florence. G. Bellini (about 1500) has expressed the secret aspirations of the soul after repose in God, and his Madonnas, according to Rio, are marked by the mysterious, profound expression of one who looks forward to suffering and sacrifice, but is sustained by love.

Cimo di Corregliano (early in the sixteenth century) is another in the line of religious painters; and of Carpaccio, so devout was he, it is said, that his fellow-citizens mourned while the blessed mansions smiled at his coming.[1]

The Umbrian School.—In the upper valleys of the Tiber, the religious influences which had gone out from the self-sacrificing life of St. Francis of Assisi, and from the pure aspirations and gentle soul of Fra Angelico, were felt for several centuries, and aided in producing the most perfect expression of religious feeling, in the art of painting, yet known to man. But in this development the art of Sienna had its share; the tender and devotional

[1] Pianto dai cittadini, sorrisa nelle beate stanze del cielo.

Taddec Bartoli (1413) undoubtedly influenced Perugino and Raphael.[1] With these two painters—names immortal in the history of Art—may be associated Francia (about 1500) as reaching the utmost heights in picturing to after ages the purest human feelings of devotion, awe and rapt religious ecstacy, combined with the highest sense of harmony and beauty.

Though the Renaissance had begun and the drift was strong towards Paganism in painting and sculpture, Raphael felt from some sources the pure influences of spiritual inspiration, and has left for all succeeding ages the highest expression of religious Art. Under the working of Christianity, he has contributed an ideal or conception of beauty and religious emotion which has been and is still an element in human progress.

We do not claim of course that, even without Christianity, the world would not have developed its sentiment of beauty, or that great artists would not have arisen in this wonderful century of the Middle Ages. The brilliant names that adorned the close of the sixteenth century, of artists who derived most of their inspiration from Pagan Art, are a proof of the contrary. We only urge that the Christian Faith, which in its essential objects has little concern with Art, did in this remarkable period make these beautiful contributions, as a kind of side-influence to the progress of mankind—a gift which will always aid the lovers of the beautiful towards the highest ideals.

The Cathedral in Pointed Gothic.—About a century and a half before the period of which we are speaking—early in the thirteenth century—a new expression of the

[1] *Rumohr*, ii. 311.

feeling for the beautiful in religious Art made itself known in various countries of Europe. Its origin is uncertain; but it first manifested itself in all probability in Germany,[1] whence it had its name of the "German Style" (*Maniera Tedescha*), and under the contempt of the Italian peoples for German Art, it was early denominated the "Gothic,"[2] and now in its most developed style receives the more specific title of the "Pointed Gothic." Its appearance in various and distant countries at such near periods was truly remarkable; it reached its highest and most perfect development in the sixteenth century, and in the land from which it probably sprang—Germany.

The Pointed Gothic Cathedral has been called "the petrifaction of the Christian Religion." It would seem that various persons in that century of mental activity, inspired with awe and devotion under the teachings of the Master, and filled with the instinct of beauty, having the intellect trained under the most exact laws of science then known, and the rules of the Greek and Saracenic and Lombard architecture, had conceived the idea of erecting a temple which should be harmonious to the purer and grander ideas of worship in the new Revelation. Everything in it should be aspiring. The thoughts of the worshipper should be called upwards to the infinite and everlasting. The great aerial spaces within, the mystery of arch beyond arch, and

[1] See Hope's *Historical Essay on Architecture*, London, 1840.

[2] Vasari speaks of it as "monstruosi et barbari"—and of "maledittione di fabbriche."

The origin of the Pointed Gothic is probably either from the north of France or Germany.

The Pointed Arch itself has been known from a remote antiquity even in the East, and the style which arose from its use in Europe in the thirteenth century, may well have received a great impulse from the experience of Saracenic architecture gained by Europeans in the crusades.

arcade over arcade, the broad sweeps of richly-colored light and deep shadows, the immense height of the interior, the continual upward tendency of every portion of the building—from the foundation and flying buttress and external pinnacle through the arches and groins meeting in the elevated nave, to the succession above of galleries, clerestories, arches, broaches, cusps, pinnacles, crockets, and roof, till the top of the dizzy spire was reached by the eye—all gave the mind of the spectator an impression of the boundless and the eternal. He was as one,

> "Watching with upturned eye the tall tower grow,
> And mount, at every step with living wiles
> Instinct, to rouse the heart and lead the will
> By a bright ladder to the world above." [1]

The characteristic conception at the basis of this architecture from which it derives its name was in itself aspiring, and controlled the whole structure. The pointed arch [2] seemed to lead upwards towards heaven. It shaped the mullions and divisions of the windows; it led to supports by piers rather than walls, and these again of necessity to flying buttresses and pinnacles and outer aisles.

[1] *Wordsworth.*

[2] In construction the pointed arch has a greater power of carrying weight with lessened thrust outwards, and a facility of proportioning its height to that of supporting jambs. Its tendency is especially vertical, and it has great advantage in groined vaulting; it permits broad window spaces, so much neglected by the Greeks, and naturally leads to decoration by window glass—the great ornament of the Pointed Gothic. It almost compels the adoption of the buttress and flying buttress, and the sharp gabled roof (a feature unknown to the Greeks), and connects naturally with the bell tower or campanile. Its advantage would at once be seen in the wide spanning arches of vaulting, in the arches carrying the central tower, and in the gables and the wide arches of the nave arcades.

It created the pointed vault, high gable, and slender vaulting shaft; it was in harmony with an apparently light and aerial building, wherein stained windows occupy so large a wall space, and traceries and filigrees of stone cover the surface. It naturally led to arch above arch, to triforia and clerestories, and that wonderful pyramidizing of arches, pinnacles, buttresses, roofs, and spires which make the best Gothic cathedral seem like a symmetrical product of vegetation, a natural growth.[1] It is impossible for any thoughtful person to stand under that wonderful structure of the Pointed Gothic, the Cologne Cathedral, without feeling some such impression as he does in the ancient forests or near a mighty cliff—of an unseen Power, of Infinite Majesty. The vast heights and mysterious spaces strike him with awe. The wonderful symmetry and airiness of this astonishing structure, the rich breadths of colored light and mellowed shadows, the delicate network of mullions, arches, ribs, stays, and tracery, the vast masses which seem to hover in air, so perfect is their support, and the gradual growth as it were of all from the earth, through flying buttresses, pinnacles, and roofs to the spires above, touch his sense of harmony, and he feels himself in presence of the spirit of beauty. Worship becomes the natural language of the place.

Uhland has partially expressed some of these feelings in his poem on the "Lost Church":

> Wie mir in jenen Hallen war,
> Das kann ich nicht mit Worten schildern,
> Die Fenster glühten dunkelklar
> Mit aller Märtrer frommen Bildern;

[1] *Hope.*

Dann sah ich, wundersam erhellt,
Das Bild zum Leben sich erweitern:
Ich sah hinaus in eine Welt
Von heilgen Frauen, Gottesstreitern.

Die Verlorne Kirche.

"Words cannot paint what there within
Awoke my spirit's ecstasies.
The darkly brilliant windows glowed
With martyrs' pious effigies.
Into a new and living world,
Rich imaged forth I gazed abroad,
A world of holy women and
Of warriors of the host of God."

Lord Lindsay's Translation.

The Gothic cathedral is certainly a new gift in the world of art to the civilized races. It is an indirect product of Christianity. We would not in this assume that there was any mysterious or supernatural appearance of the Pointed Gothic in the history of the Middle Ages. This style was a fruit of evolution or development from the previous styles. It arose naturally from the Rounded, the Norman or Lombard or Early Gothic, and perhaps ultimately from the Byzantine and Saracenic and Greek.

But stimulating the sense of beauty and the desire to develop new resources in the forms of architecture then known, there was in that age a peculiar religious sentiment, which found its best expression in the aspiring and reverential features of the Pointed Gothic cathedral. This was assisted by a remarkable social institution of those ages, of which we shall now speak.

The Gilds.—We have already observed that the painters of Italy in the thirteenth century formed themselves into associations, which had for their objects spiritual and moral improvement as well as proficiency in their art. These fraternities, no doubt, had a profound influence in shaping the character of the religious schools of art of Sienna and Umbria.

The various gilds throughout Europe were filled in the beginning with this same religious enthusiasm. In their charters and laws they all connected charities and acts of devotion with their professional objects. The regulations nearly always begin: "After these things are done which are appropriate to the Christian religion and belong to God";[1] then follow more practical directions to the *confratriis* or fraternities.

The Associations were said to be formed "not only for present advantage and temporal gains, but more for celestial and eternal benefits."[2] No one in the commencement of them was admitted as a member, even of the lowest trade, "whose moral conduct and honor were not stainless; no one who had not proved himself a proper workman, and therefore no one who had not served a regular apprenticeship.[3] No member was allowed to possess tools unless these were proven by competent testimony to be good and honest."

"In the worship of God Almighty," says the constitution of an ancient English gild (Garklekhith, 1375 A.D.), and of the Blessed Virgin, his mother, this fraternity is begun of good men for the amendment of our lives and souls, and to nourish more love between the brethren and sisteren of the Brotherhood, etc."[4]

[1] Post peracta illa quæ Dei sunt et Christianæ Religioni conveniunt, et cet. (Labb. *Conc.* t. v. 16.)

[2] Non solum pro commodis presentibus et lucris temporalibus sed magis pro beneficiis celestibus et perpetuis. *Das Gildenwesen im Mittel Alter. Wilda*, p. 358.—Halle, 1835.

[3] *English Gilds.*—T. Smith, London, 1870.

[4] *Ibid.*, cxxix.

In a similar spirit the gild of goldsmiths in Svenburgh begin their charter, "How lovely when brethren dwell together in unity." And the merchants' gild at Oldensee (1476) open theirs with, "Inasmuch as God is Love, and whosoever dwelleth in love dwelleth in Him," etc. That of St. Olaf's at Store Heddingen proclaims: "Be it known to you, brethren and sisteren, that this association is founded not for the sake of wassail, but to assist law and order, and that brother may help brother."[1] Such phrases are common in all these ancient charters.

The gilds of masons and builders were especially inspired with this religious enthusiasm. It was often said of them that they "worked not for profit, but the salvation of their souls" (pro salute animæ non pro crumenâ). They were a kind of laical church.[2]

These gilds were, no doubt, as exclusive and as selfish in competition as are the modern trades' unions. They held in their hands the business of architecture of Europe, and did their best to keep it. They were at times cruel and oppressive towards their own offending members. They were a laical church, and, like their more religious exemplar, often violated the professed principles of religion in their association. But there was burning among them a spark of the Christian fire which enlightened and inspired their professional work.

Their work became known for its singularly conscientious, thorough, and reverent character. The ornamentation and detail labored upon by them in hidden parts of the sacred buildings, the religious structures erected

[1] Fratres et sorores notum sit vobis, istud convivium, non causâ potationis esse inchoatum sed ordini, et cet, ut frater fratri auxilietur, et cet (*Gildenwesen*, p. 33.)

[2] *Vitet.*

in forests and wildernesses and remote and inaccessible places, showed the same spirit of conscientiousness and devotion.

Never in the history of human art has such painstaking, honest, and conscientious work on the inaccessible and unseen portions of sacred buildings been seen as in the pious labors of the builders of cathedrals of the thirteenth and fourteenth centuries. The architectural investigator of the nineteenth century is amazed and awed to discover sometimes on remote portions of a church of the thirteenth century beautifully carved and delicate stonework, with every detail perfect, which no human eye had been able to see for six hundred years, as if the workman had chiseled these exquisite ornamentations "for the love of God," and not for praise or hire[1] from men. Nor does it lower the aspiration that, once being imbued with the devotion of the age, the architect and builder did his work not conscious always of the divine, but from the habit of honest and reverent work taught him by his faith. It was simply unconscious religion in practical life.

The devout tone and remarkable skill of these masons made them favorites of the clergy and the popes. The builders carried with them from Italy to other Christian countries Pontifical bulls to protect and aid them. Yet they were a reaction against ecclesiastical power. It is without doubt these gilds of masons, where each laborer felt himself at once an artist and a religious missionary, that in the thirteenth century carried the inspiration and the science of the Pointed Gothic

[1] A remarkable instance of this was related to me by a friend in the renewal of the celebrated Sainte Chapelle in Paris, erected under Louis XI. (1202), where the most exquisitely carved stone flowers were discovered on the pinnacles upon the roof. They had remained unseen for six hundred years.

architecture[1] to all the leading countries of Europe.[2] It is difficult otherwise to account for so many wonderful cathedrals arising or being restored in various parts of Europe, in similar general style, and yet with so much individual invention and genius and such deep reverence expressed in the designs. These devout laborers, trained in certain scientific methods of building which they held as secrets, went from one country to another as artists to express their love of beauty and their adoration of Christ in temples which should be houses of worship and symbols of majesty and harmony for all succeeding ages. They began under the sole conditions of the pointed arch, suitability to climate, and the cruciform ground plan, and then chiseled their aspirations in arch above arch, in triforia and elevated arcades, in elongated windows and rich window spaces, in clustered columns supporting on delicate ribs great expanses of roof, in pointed vault, high gable, and slender shaft, in flying buttress and pinnacle and sharp roof, and in towers with gradually diminishing galleries and arches till the tall spire is ended.

These wonderful symmetrical structures of stone, rising like rounded pines to the skies, are the prayers of the medieval laborer. This lace-work of stone mullions and arches and ribs and stays, this gossamer made of the rock, this filigree of masonry, are his offerings of beauty and perfected work to Him who, he believed, had sacrificed all for men. The rich windows and broad beams of colored light, the exquisite span of the pointed arch, the

[1] See Dallaway's *Hist. of Architecture*, Wren's *Parentalia*, and Pownall's *Archæologia.*

[2] A cette epoque, la franc maçonnerie était une institution tout à fait artistique, une Academie, ou tous les travailleurs avaient une place. (*Hist. de la Ste. Chapelle.* Decloux, Paris, 1857.)

high and solemn nave, the mysterious vistas, are his thoughts of worship and love to the unspeakable One.

We know but little about the history of these humble and inspired workingmen. In England we hear of legislation against them in the time of Edward III. (1351) and of Henry VI. (1425), showing that the ruling authorities had become independent of them. But as far back as 1202, we read that Bishop de Lacy founded or introduced a fraternity of masons, to last five years, to repair the Cathedral of Winchester, held to be the first completed specimen of Pointed Gothic in England.[1] They are said[2] to have been first encouraged by Henry III.[3] (1216). In 1427, Bishop Lacy sends Free Masons to Bere to provide stone for the Cathedral of Exeter. In the reign of Henry VI. (1422) the Masons in Suffolk stipulated in their contracts, that they should be provided with a lodge by the parishes, and with various articles of apparel.[4] Liberty to impress Masons was given by law in 1435. In the twenty-eighth year of the reign of Henry VIII., Prior Gybbs grants office for life of "Master of all

[1] Anno 1202, D. Winton, G. de Lacy constituit *confratriam* pro reparatione ecclesiae Winton, duraturam ad quinque annos completos.—*Annales Winton* (Britton).

[2] Storer's *Gothic Architect.* Convocati sunt artifices Angli et Franci; this was for the completion of Westminster Abbey. See Dallaway.

[3] Britton's *Exeter Cath.*, p. 97. Smirke (*Archæologia*) thinks the Free Masons brought the Pointed Arch to perfection.

"From the first use of the Gothic in the twelfth century," says Dallaway, in a quotation, "to its completion in the fifteenth century, the improvements were owing to the munificence of the Church and the vast abilities of the Free Masons of the Middle Ages. These scientific persons have great claims to our admiration from the richness and fertility of their inventive powers."

The History of Canterbury Cathedral (Willis') says nothing of Free Masons, but speaks of foreign architects and workmen.

See *Krauser- Kirchenbau*, i. 522, on Masonic Brotherhoods.

[4] *Hope*, i. 211

works" of convent, commonly called "Free Masonry," to a certain person, "Free Mason"[1] (Britton, *Bath Abbey Ch.*, p. 37). The Free Masons are spoken of in an act of C. II. (1684) and a special assize was set for them.

In Scotland they are related to have built the Abbey of Kilwinniny about the end of the fifteenth century. In Picardy and the Isle of France, they are spoken of as early as the twelfth century.[2]

In Germany they were held in honor for the longest period, as we hear of a lodge of Free Masons placed at the head of all the lodges of that country in 1459 for finishing the Cathedral of Strassburg,[3] which may rank with the Cologne Cathedral as the most complete specimen of the Pointed Gothic.[4]

The foundation of the churches and cathedrals of England has always some religious expression connected with it.

Thus the Abbot of Fulda (820 A.D.) built a little round church in the cemetery of the Church of Glastenbury "This edifice," says the historian, "the Abbot and his

[1] "John Hylmer and William Virtue, *Free Masons*, undertook the vault of the roof of the choir (St. George's Chapel) for £700 in 1506." (Dallaway, *St. George's Chapel*, p. 169.)

[2] Vitet, *Notre Dame de Noyon*, p. 123. Van Overstræten (*Arch. des Temples Chrét.*) attributes the origin of the Free Masons and the Pointed Gothic to England.

[3] Hope's *Essay*, ii. 376.

[4] It should be remarked that Street did not find in Spain any trace of the Free Masons in the Gothic architecture.—(Street's *Gothic Architecture in Spain.*) Possibly this "lay church" (as Vitet calls them) found themselves out of place in this bigoted country. Or possibly, Street has not correctly translated the names of the Masons in the old contracts.

Le Duc speaks of the work of the Free Masons and of the Pointed Gothic as "a protest against monastic power."

companions erected under divine teaching, figuring some great thing. I know not what, but conceive it may be considered a figure of Christ and the Church. . . . And the eight columns standing in the temple of God may shadow forth the eight beatitudes. . . . But the round form of the Church having no end, and encircling the principle of life—that is, the divine sacraments—may fairly be taken to signify the Kingdom of Eternal Majesty, and the hope of Life everlasting, and the never-failing rewards with which the just shall finally be crowned."[1]

So in the Church of Ely, the Lady-chapel was begun by John of Wisbeach in 1321, "but he had not sufficient means, but firmly trusted in the divine aid, and commending himself and his work to God Almighty and the Blessed Virgin, prayed earnestly and without intermission that He would assist him in all his need, and God Almighty who according to His mercy, maketh poor and maketh rich,[2] abaseth and lifteth up, never suffered him to abound or to be in want during his whole work."

The histories of the Cathedrals show a like spirit of piety and devotion in their construction. It is not to be supposed of course that every mason and workman and architect engaged in these structures was equally animated with this religious fervor; but the prevailing tone, the inspiration at the basis was religious, and this affected all employed and influenced the whole work.

These then are the side-gifts of Christianity to the modern world; the ideal of the Madonna as the beatified woman, and the conception of the Pointed Gothic Ca-

[1] *Vita Eigilis.*

[2] *Hist. Eli*, Wharton, i. 651.

thedral as the temple of worship and aspiration and sacred thought. They are not to be ranked with the great achievements of this Faith chronicled in this volume, but they have had their share in the advancing culture of the leading races of mankind, and are destined not to be forgotten.

APPENDIX.

ANCIENT HUNGARIAN LEGISLATION.

THE ancient laws of St. Stephen, King of Hungary, who reigned about 1000 A.D., bear out all that has been said of the humane progress urged by Christianity in other ancient codes of Europe.

Manumission of slaves is encouraged, and if made by will, no one is allowed to break it; and if only promised by a master, his widow must carry out the purpose of her husband *pro redemptione animæ*, for the salvation of her soul (II, 17). No free man is permitted under any pretext to be enslaved (II, 20).

Piety and compassion and the Christian virtues are urged by the king, as if he were a pastor rather than a ruler, especially on the ground that "the Lord of virtues is the King of kings" (Nam Dominus virtutum ipse est Rex Regum, II–10).

The religious principle of equality is seen in the law that the property of a peasant should be divided equally among sons and daughters (III, 29), and respect for woman in the entire power given to the widow over her property (II, 24).

The barbaric element, not yet modified by religion, is found in these laws, in the compensation affixed to the murder of a wife. The nobleman escapes with the payment of fifty bullocks and a penance of fasting; the soldier with ten bullocks and a fast, and the ignoble with five bullocks and a like penance (II, 14).

This legislation is so soon after the introduction of Christianity, that the idea of the dower has a barbaric tinge, as a compensation to the wife for what she has endured in marriage. Dotem dicimus, quæ uxori propter ejus deflorationem, et concubitum, de bonis mariti datur (I, 90).

The dower had not yet received its new character under religion. It was only the coarse Morgengabe.

(See *Corpus Juris Hungariæ* Budæ, 1779. *Sancti Steph. Reg. Dec.* about 1000 A.D.)

The remarkably free position of woman in Hungarian history, and her legal independence now, is no doubt due to these early influences of the Christian Religion. It certainly did not come from Roman Law or the Teutonic codes and customs.

(See also *Die Ungar. Staatsbürgerinn*, etc. J. v. Fejes. Pest, 1812).

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